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CRA-8705-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RATNESH CHANDRA SINGH BISEN

ON THE 27th OF APRIL, 2026CRIMINAL APPEAL No. 8705 of 2024*SHEIKH JUNED**Versus**THE NATIONAL INVESTIGATION AGENCY (NIA)*

.....
Appearance:

*Shri Sanjay Kumar Verma - Advocate for the appellant.**Shri Deepesh Joshi - Advocate appearing through video conferencing
assisted by Shri Qasim Ali - Advocate for the respondent-NIA.*

.....
WITH

CRIMINAL APPEAL No. 13145 of 2024*MOHD. WASEEM**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri Alok Vagrecha - Advocate for the appellant.**Shri Deepesh Joshi - Advocate appearing through video
conferencing assisted by Shri Qasim Ali - Advocate for the respondent-
NIA.*

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CRIMINAL APPEAL No. 13275 of 2024

*MOHAMMAD KAREEM**Versus*



***THE STATE REPRESENTED BY THE SUPERINTENDENT OF PLICE
AND OTHERS***

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Appearance:

Shri Saket Anand - Advocate for the appellant.

Shri Deepesh Joshi - Advocate appearing through video

conferencing assisted by Shri Qasim Ali - Advocate for the respondent-

NIA.
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ORDER

Per. Justice Vivek Agarwal

These criminal appeals under Section 21(4) of the National Investigating Agency Act, 2008, have been filed on behalf of three appellants, namely, Sheikh Juned, Mohd. Waseem and Mohd. Kareem, arising out of the order dated 14.11.2024 passed by the learned Special Judge, NIA Court, Bhopal, in Special Case NIA No.1/2023, under Section 21 of the National Investigation Agency Act, 2008, seeking setting aside of the impugned order dated 27.06.2024 and enlargement of the appellants on bail.

2. It is submitted that mainly three objections have been taken by the learned Special Public Prosecutor for the NIA, namely, that the statements of witnesses under Section 164 of the Code of Criminal Procedure and the statements of witnesses under Section 161 of the Code of Criminal Procedure, *prima facie* shows that all the accused persons are radicalised persons inclined to commit terrorist acts and they are connected with other co-accused.

3. Second ground is that on the memorandum under Section 27 of the



Indian Evidence Act, recorded on behalf of Yasir Khan S/o Mushtaq Khan, as contained in Ex.D-2, connects the present appellants.

4. It is submitted that though no incriminating material except for photocopies of Islamic literature have been recovered from these accused persons vide Ex.D-55 from the rented house of Mohd. Waseem and similar material was recovered from Mohd. Kareem vide Ex.D-36, which according to NIA counsel appearing along with Mrs. Monika Patel, Inspector, NIA, reflects and discloses the mindset of the accused to commit the offence.

5. In support of this contention, learned counsel for the appellants have placed reliance on the judgment of the Hon'ble Supreme Court in case of **Vernon Vs. State of Maharashtra and another, (2023) 15 SCC 56** , and referring specifically to paragraphs 36 and 38, it is pointed out that in paragraph 36, the Hon'ble Supreme Court has referred to the judgment in the case of **Anand Teltumbde Vs. NIA, 2022 OnLine BOM 5174** , and has noted that unsigned documents recovered from the laptop of one of the accused, cannot give rise to a presumption that accused was guilty.

6. Similarly, in paragraph 38, the Hon'ble Supreme Court has noted that "We have already observed that it is not possible for us to form an opinion that there are reasonable grounds for believing that the accusation against the appellant of committing or conspiring to commit terrorist act is prima facie true. The witness statements do not refer to any terrorist act alleged to have been committed by the appellants. The copies of the letters in which the appellants or any one of them have been referred, record only third-party response or reaction of the appellants' activities contained in communications



among different individuals. These have not been recovered from the appellants. Hence, these communications or content thereof have weak probative value or quality. That being the position, neither the provisions of Section 18 nor Section 18-B can be invoked against the appellants, *prima facie*, at this stage. The association of the appellants with the activities of the designated terrorist organisation is sought to be established through third-party communications. Moreover, actual involvement of the appellants in any terrorist act has not surfaced from any of these communications. Nor is there any credible case of conspiracy to commit offences enumerated under Chapters IV and VI of the 1967 Act. Mere participation in seminars by itself cannot constitute an offence under the bail-restricting sections of the 1967 Act, with which they have been charged."

7. At this stage, learned counsel for the NIA, admits that Mohd. Waseem from whom mobile phone is recovered, has not been arrested on the basis of call details. It is reiterated that photocopies recovered, disclose the mindset of the accused. Reliance is again placed on Sections 13, 18, 18B and 20 of the Unlawful Activities (Prevention) Act, 1967.

8. After hearing learned counsel for the parties and going through the record, three admissions are important, as made by the learned counsel for the NIA, on instructions of Mrs. Monika Patel, Inspector, NIA, namely, except for disclosure of mindset, there is no recovery of any substantive material admissible in evidence on the memorandum under Section 27 of the Indian Evidence Act. Secondly, Mohd. Waseem from whom mobile phone was seized, has not been arrested on the basis of any communication or



interception of any message. Thirdly, only photocopies were seized of certain material.

9. Thus, when they are tested on the touchstone of Section 47 of the UAPA Act, 1967, then Section 46 of the UAPA Act, 1967, talks of admissibility of the evidence collected through the interception of the communications. In terms of admission made by Shri Qasim Ali, learned counsel for the NIA, that Mohd. Waseem has not been arrested on the basis of any intercepted communication, the provisions of Section 46 of the UAPA Act, will not be applicable.

10. As far as terrorist act is concerned, it is defined under Section 15 of the UAPA Act, 1967. It is evident from the record that none of the requirements of Section 15 of the UAPA Act, 1967, are fulfilled.

11. As far as Section 13 is concerned, it deals with the punishment for unlawful activities, but that punishment can only be inflicted once the guilt is proved. That guilt is to be proved on the touchstone of the evidence.

12. It is admitted by the learned counsel for the NIA that in another crime number, not connected with the present case, the Hon'ble Supreme Court has granted two years' time to the trial Court to conclude the trial. However, it is fairly admitted that in the present case none of the parties ever approached the Supreme Court and directions issued in regard to another crime number, are not binding in the present case.

13. As far as the provisions of Section 18 and 18B of the UAPA Act are concerned, they deal with the punishment for conspiracy and the punishment for recruiting of any person or persons for terrorist act.



14. Section 20 deals with the punishment for being a member of terrorist gang or organisation.

15. When tested on this touchstone then since there is no *prima facie* material to connect the appellants with the memorandum of Yasir Khan, the same is *prima facie* not sufficient to connect the present set of appellants.

16. In terms of the judgment of the Hon'ble Supreme Court in case of **Vernon** (supra), as reproduced above, there is no credible case of conspiracy to commit offences enumerated under Chapter IV and Chapter VI of the UAPA Act, 1967. Therefore, mere participation in seminars by itself, cannot constitute an offence under the bail, restricting Sections of the UAPA Act. We are of the considered opinion that bail can be granted to the appellants because admittedly the trial is going to take long time. However, while setting aside the impugned order and granting bail to the appellants, we would like to impose the following conditions, namely:-

(1) Each of the appellants shall furnish a personal bond to the tune of **Rs.2,00,000/- (Rupees Two Lakhs only)** with two local solvent sureties of the same amount to the satisfaction of the trial Court.

(2) The appellants will surrender their passports, if they are in possession of passports, and shall disclose permanent residences of all their family members on both sides i.e. parental as well as maternal, giving at least four permanent addresses on each side.

(3) The appellants will not leave the country without permission of the trial Court and shall appear before the trial Court on each and every date so fixed without fail.



(4) The appellants shall abide by any such other condition imposed by the trial Court.

17. In the above terms, these criminal appeals are allowed and disposed of.

(VIVEK AGARWAL)
JUDGE

(RATNESH CHANDRA SINGH BISEN)
JUDGE

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