



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

% ***Reserved on: December 21, 2023***

Pronounced on: April 29, 2024

+ CRL.A. 450/2022

SAQUIB NISAR

..... Appellant

Through: Mr. Mehmood Pracha with Mr. Rudro Chatterjee, Mr. Sanawar Choudhary, Mr. Jatin Bhatt, Mr. Yashovardhan Oza, Mr. Faisal Moiuddin, Mr. Mohd. Hasan, Mr. R.H.A. Shikandar, Mr. Harshit S. Gahlot, Mr. Mohd. Shameem & Ms. Nujhat Naseem, Advocates

Versus

STATE

.....Respondent

Through: Mr. Tarang Srivastava, Additional Public Prosecutor with ACP Lalit Mohan Negi & Inspector Alok Kumar.

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE SHALINDER KAUR**

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal under Section 21 of the National Investigation Agency Act, 2008 read with Article 266 of the Constitution of India and Section 439 of Code of Criminal Procedure has been filed by the appellant



against the impugned order dated 23.07.2022 passed by the learned Court of Sessions whereby his application seeking bail has been dismissed.

2. According to appellant, he has been falsely implicated in **FIR No.166/2008**, for offences under Sections 121/307/323 IPC, Sections 3/4/5 of Explosive Substance Act and Sections 10/12/13 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to 'UAPA').

3. The case of prosecution is that on 13.09.2008, serial bomb blasts occurred at different places, i.e. Karol Bagh, Cannaught Place and Greater Kailash, in Delhi. In addition, three live bombs were also detected and defused. These serial blasts had created a panic in Delhi resulting into death of 26 persons and causing injury to 135 persons besides destruction of property. On the same day, a terrorist organisation namely Indian Mujahideen took the responsibility of these serial blasts by sending e-mails to various electronic and print media also mentioning that the blasts which occurred in Jaipur, Rajasthan on 13.05.2008 and Ahmedabad, Gujarat on 26.08.2008 were also organized by them.

4. Consequently, an FIR No.156/2008 was registered at Police Station Karol Bagh; FIR No.130/2008 was registered at Police Station Greater Kailash; FIR No.293/2008 was registered at Police Station Tilak Marg; FIR No.418/2008 and FIR No.419/2008 were registered at Police Station Cannaught Place, for offences punishable under Sections 121/121-A/122/123/307/323/427/120-B IPC, Sections 3/4/5 Explosive Substances Act, Sections 16/18/20/23 of UAPA, Section 66 of Information and Technology Act.

5. Upon investigation of the alleged e-mail, it was found to be sent from the IP address of MTNL, Mumbai which was allotted to M/s Kamran Power



Control Pvt. Ltd. and the sender had hacked its *wifi* connection to send this e-mail.

6. As per prosecution case, on receipt of the secret information on 19.09.2008, a raid was conducted at Flat No.108, Batla House, Delhi wherein one Mohd. Saif was apprehended who revealed names of accused Ariz @ Junaid, Shahzad @ Pappu and besides other accused Mohd. Atif Amin @ Bashir & Mohd. Sajid @ Pankaj Sharma. During their search, one AK series rifle along with magazines containing 30 live rounds each, two pistols of 30 bore and various articles used for assembling bombs etc. were recovered from their possession. During interrogation at the spot, apprehended Mohd. Sarif revealed that Saquib Nisar is one of his associates of the outfit Indian Mujahideen, who is also involved in Delhi serial bomb blasts on 13.09.2008.

7. Upon receipt of secret information, a raid was conducted at F-68/1, Shaheen Bagh, Jamia Nagar, Delhi, on 21.09.2008 from where appellant - Saqub Nisar was apprehended along with Mohd. Shakeel and Zia-ur-Rehman and a lot of recovery related to the blasts occurred on 13.09.2008 was effected. Appellant was arrested in the present FIR case on 04.10.2008 and since then, he is in custody.

8. On 17.12.2008, charge-sheet was filed before the learned Trial Court wherein it has been alleged that the appellant is an active member of terrorist outfit Indian Mujahideen and is involved in serial blasts which took place in Delhi on 13.09.2008. On 26.07.2008 the appellant along with thirteen other co-accused had hatched a conspiracy at Ahmadabad to reccee the places for blasts which occurred on 27.07.2008 and thereafter, he came to Delhi to join the conspiracy for blasts in Delhi. On 03.09.2008, he along



with Mohd. Atif Ameen and Mohd. Shakeel went to Karol Bagh to recce the places for placing the bombs.

9. During further investigation, it came to be revealed from his mobile phone that on 03.09.2008, his location was at Karol Bagh, along with the mobile numbers of Mohd. Atif Ameen and Mohd. Shakeel. However on 13.09.2008, from 16:3829 hrs and 19:18:06 hrs, there was no call received on his mobile phone and he was in regular touch of master-mind Mohd. Atif Amin. On 13.09. 2008, as per his mobile phone his presence was located in Batla House, which corroborates with disclosure statement of other accused persons.

10. Vide Order on Charge dated 05.02.2011, the learned Trial Court held that appellant had *prima facie* committed offence under Sections 18, 16 and 20 of Unlawful Activities (Prevention) Act, 1967. Vide order dated 06.05.2022, appellant was charged for the offences punishable under Sections 18, 16 and 20 of the Unlawful Activities (Prevention) Act, 1967 and trial commenced.

11. On 06.06.2022 the appellant moved his first bail application before the learned Trial Court, which was dismissed vide order dated 23.07.2022, which has been assailed in the present appeal.

12. The challenge to the impugned order dated 23.07.2022 by the appellant is on the ground that he is innocent and has been falsely implicated in the present case and even if the entire evidence is considered on its face value, no case is made out against him.

13. **During the course of hearing, learned counsel appearing on behalf of appellant submitted** that the learned Trial Court has erred in holding that material witnesses are yet to be examined whereas all material



have already been recorded. No recoveries were affected from the appellant and thus, there is no link evidence to connect him with the terror activities or Delhi bomb blast cases.

14. Learned Counsel for appellant further submitted that the appellant has been acquitted by the Ahmadabad Court vide judgment dated 08.02.2022 and there is no incriminating evidence on record to establish his involvement in the present case. Even the recovered mobile phones have not been established to be that of the appellant.

15. Learned counsel for the appellant empathetically submitted that appellant is in custody since his arrest and the co-accused Mohd. Hakim has been granted bail by the Coordinate Bench of this Court in the present FIR case, despite the bar of Section 43(D)(5) of UAPA and the role assigned to the appellant is on lesser footing as that of co-accused Mohd. Hakim. Hence, on ground of parity, appellant also deserves bail.

16. Reliance was also placed upon decision of Hon'ble Supreme Court in *Union of India Vs. K.A. Najeeb* (2021) 3 SCC 713 to submit that if the completion of trial is likely to take long time, the accused can be granted bail. To submit that it would be premature to presume that the role of the appellant cannot be viewed in isolation, reliance was placed upon decision of Division Bench of this Court in *Mohd. Hakim Vs. State* 2021 SCC OnLine Del 4623.

17. **To the contrary, learned Additional Public Prosecutor for State vehemently opposed the present appeal** by submitting that co-accused Mohd. Saif, who was apprehended by the raiding party, had disclosed the names of accused Saqib Nissar and the other accused persons who were involved in serial bomb blasts in Delhi. Further appellant's mobile phone



location was in Karol Bagh on 03.09.2008 and in Batla House on 13.09.2008, which establishes involvement of appellant in the ghastly crime and the statutory bar under Section 43(d)(5) of UAPA, provides that an accused should not be released on bail if there is reasonable ground to believe the accusation.

18. Learned Additional Public Prosecutor further submitted that the learned Trial Court, has in the light of material placed, rightly rejected the bail application filed by the appellant. The charge-sheet filed in the present case elaboratively discusses the role attributed to the appellant in the serial bomb blasts that occurred in Delhi and there is sufficient material on record to prove that the appellant along with other accused persons had hatched conspiracy for those serial blasts and so, he does not deserve concession of bail. Learned Additional Public Prosecutor submitted that the role of appellant is different from that of Mohd. Hakim and so, the present appeal deserves to be dismissed.

19. The respondent-State in support of its case relied upon decision of Hon'ble Supreme Court in *Neeru Yadav Vs. State of Uttar Pradesh* (2014) 16 SCC 508 to submit that before granting bail every aspect of the crime is required to be scrutinized and the Court shall not capriciously record that the accused is entitled to be admitted on bail on the ground of parity.

20. Reliance was also placed upon decision of High Court of Allahabad in *Manish vs. State of U.P.* 2022 SCC OnLine 429 to submit that a Court is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reason.



21. Further reliance was placed upon the decision of Hon'ble Supreme Court in *Gurwinder Singh vs. State of Punjab & Anr.* in Crl.A.704/2024 to submit that mere delay in trial cannot be used as a ground to grant bail.

22. Also submitted that substantial witnesses have already been examined and at the fag end of the trial, the appellant-accused does not deserve bail.

23. **Submissions heard and record perused.**

24. Relevantly, the learned Trial Court in the Order on Charge dated 05.02.2011 has taken note of the role attributed to the appellant, which is as under:-

“17.

(v) Accused Saquib Nisar (A-5) is alleged to have gone to Gaffar Market, Karol Bagh, New Delhi alongwith A-1 and D-1 on 03.09.2008 for identifying the spot to plant IEDs and he allegedly stayed at L-18, Batla House, Delhi on 13.09.2008 with mobile phones of his associates, who had gone to plant IEDs at different places in Delhi, to mislead about their location at the time of blasts in order to avoid arrest. Material against him includes his location on specific dates and connectivity him D-1, A-1 and other associates through his mobile No. 9899040253.”

25. Thereafter, the learned Trial Court while framing Charges held that the appellant, in conspiracy with other accused persons, conducted recce of the location for planting bombs to cause maximum damage in terms fo loss of life and damage to property and thus, committed offence punishable under Sections 302/307/427 read with Section 120-B IPC; under Sections 3



and 4 of the Explosive Substances Act read with Section 120B IPC; under Sections 18,16 and 20 of the Unlawful Activities (Prevention) Act, 1967 and under The Information and Technology Act, 2000 and further directed that all the accused persons shall be tried together by clubbing all the FIRs, while FIR No. 166/2008 shall be taken as the lead case.

26. Relevantly, the learned Trial Court while rejecting the bail application of accused vide order dated 23.07.2022 observed that no accused person of an offence punishable under Chapter 4 and Chapter 6 of UAPA, can be released on bail unless the Court is of the opinion that the accusation against the accused is *prima-facie* not true. Concurring with the submissions of the State that the charges of conspiracy were invoked against the appellant-accused, his role could not be viewed in isolation and, therefore, in the light of the fact that 1030 witnesses were cited by the prosecution, out of which 55 witnesses were left to be examined and in view of directions passed by the Hon'ble Supreme Court, the trial was conducted on every Saturday, the bail application of the appellant was rejected.

27. The appellant before this Court has assailed rejection of his bail while seeking parity with co-accused **Mohd. Hakim (Supra)**, who has been granted bail by this Court on 06.10.2021. Pertinently, in the case of **Mohd. Hakim (Supra)**, this Court has taken note of his role by observing that *a limited role has been ascribed to the appellant in the offences alleged, namely, that he had carried a certain quantity of cycle ball-bearings from Lucknow to Delhi, which, according to the allegations, were subsequently used to make Improvised Explosive Devices (IEDs), which were employed in the series of bomb blasts that occurred in Delhi in 2008.* While observing so, the Court held that *once charges under the provisions*



*of UAPA have been framed against the appellant, the reasonable grounds to believe that the accusations against the accused are prima facie true, does not arise; which finding of learned Trial Court has not been challenged before this Court and so, the bar engrafted in the proviso to Section 43-D(5), as expatiated upon by the Hon'ble Supreme Court in *Watali (supra)*, would operate.*

28. The Hon'ble Supreme Court in *Watali (Supra)*, in an appeal preferred by the NIA against the order and judgment of the High Court, whereby the order rejecting bail to the accused of committing offences under UAPA passed by the Trial Court, was reversed and observed that *the High Court did not appreciate the material which found favour with the Designated Court to record its opinion that there are reasonable grounds for believing that the accusation against the respondent is prima facie true and that the High Court ought to have taken into account the totality of the materials/evidences which depicted the involvement of the respondent in the commission of the stated offences and being a member of a larger conspiracy.* The Hon'ble Supreme Court further observed and held as under:-

53. The High Court ought to have taken into account the totality of the material and evidence on record as it is and ought not to have discarded it as being inadmissible. The High Court clearly overlooked the settled legal position that, at the stage of considering the prayer for bail, it is not necessary to weigh the material, but only form opinion on the basis of the material before it on broad probabilities. The court is expected to apply its mind to ascertain whether the accusations against the accused are prima facie true. Indeed, in



the present case, we are not called upon to consider the prayer for cancellation of bail as such but to examine the correctness of the approach of the High Court in granting bail to the accused despite the materials and evidence indicating that accusations made against him are prima facie true.”

29. Thus, the ratio of law laid by Hon’ble Supreme Court in ***Watali (Supra)*** is that for grant and non-grant of bail, the elaborate examination or dissection of the evidence is not required and the Court is expected to merely record a finding on the basis of broad probabilities.

30. The appellant has also placed reliance upon decision in ***K.A. Najeeb (Supra)*** wherein the appeal preferred by the appellant- Union of India against the order passed by the High Court of Kerala granting bail to accused facing trial for offences under Explosive Substances Act, 1908; UAPA and provisions of IPC, was rejected by the Hon’ble Supreme Court. In the said case, the concerned accused had earlier absconded and the trial proceeded against his other co-accused, who were eventually sentenced to imprisonment for term, not exceeding eight years. The accused therein had already served under-trial incarceration for more than five years and there was no likelihood of completion of trial in near future, bail was granted to him.

31. This Court in ***Mohd. Hakim (Supra)*** has categorically observed that the decision of the Hon’ble Supreme Court in ***K.A. Najeeb (Supra)*** does not overrule its decision in ***Watali (Supra)***, and these two verdicts lay down two different approaches for considering the matter of bail in cases where offences under the UAPA are alleged.



32. The settled proposition of law that at the time of grant or refusal of bail, each case has to be seen on its own facts and the role of accused has to be considered individually, especially in cases where a larger conspiracy is involved.

33. The prosecution has alleged that there is sufficient material to show that appellant / accused Mohd. Saif had with his associates hatched a conspiracy for serial bomb blasts in Delhi causing killing of 26 innocent people & injury to 135 people in the serial blasts. Appellant Mohd. Saif, who was apprehended on 19.09.2008 pursuant to a raid conducted at Flat No. 108 of Building L-18, Batla House, Delhi, in his disclosure statement had revealed that appellant-Saquib Nisar is one of their associates of terror outfit “Indian Mujahideen” involved in 13.09.2008 Delhi Serial blasts. Another accused Zeeshan Ahmad has also named appellant herein in his disclosure statement. During investigation, it revealed that Appellant Saquib Nisar was working as recruitment assistant in *Talent Pro India HR Private Limited*, Nehru Place, Delhi and was associate of accused Mohd Atif Ameen. Appellant had joined the conspiracy for Ahmadabad serial bomb blasts on 26.07.2008, for which he along with other accused had gone to Ahmadabad on 11.07.2008 to conduct reece of the places for blasts. Similarly, he had also gone to Karol Bagh on 03.09.2008 for conducting reccee of the places for blasts. He used to regularly visit flat No. 108, L-18 Batla House, Delhi for the conspiracy of 13.09.2008 Delhi serial bomb blasts and assisted his associates in making IEDs. Further, at the time of planting the IEDs in Delhi on 13.09.2008, he was assigned the task to be present at the flat no. 108, L-18 Batla House on 13.09.2008 to keep the flat open and keep mobile phones of his associates with the instructions to



attend all calls made on their mobile phones so that they could bluff the investigation agencies by positioning their mobile phones at the location of Batla House, Delhi and not at the place of crime.

34. On the day of blasts i.e. 13.09.2008, at about 4.30 pm, the accused persons went from flat No. 108, L-18 Batla House along with IEDs to plant them at their respective blast sites, whereas appellant Saquib Nisar remained present at the flat No. 108, L-18, Batla House.

35. As per attendance register of *Talent Pro India HR Private Limited*, appellant was absent on 11.07.2008 and on 12.09.2008, he was on leave from office. However, on 13.09.2008, his office was closed due to Saturday.

36. The interrogation has also revealed that on 03.09.2008, location of his mobile number is in Karol Bagh along with mobile numbers of Mohd. Atif Ameen and Mohd Shakeel and on 13.09.2008, the location of his mobile is Batla House.

37. In the considered opinion of this Court, the allegations against the appellant and the role attributed to him, does not persuade this Court to release the appellant on bail.

38. The Hon'ble Supreme Court in *Gurwinder Singh (Supra)*, wherein the appellant had challenged dismissal of his bail for the offences under Sections 124A/153A/153B and 120B IPC as well as Sections 17/18/19 of UAPA read with Sections 25 and 54 of the Arms Act, upheld the decision of the High Court in view of the material available on record which, *inter alia*, indicated his involvement with banned Terrorist Organisation. The Supreme Court observed and held as under:-

“28. 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.

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46. 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.”

39. In **Gurwinder Singh (Supra)**, the accused had spent five years behind bars and his bail application was rejected while observing that mere delay in trial pertaining to grave offences, cannot be used as a ground for grant of bail.

40. This Court is conscious that speedy trial is appellant's valuable right.



The Hon'ble Supreme Court in *Shaheen Welfare Association Vs. Union of India* while emphasizing the need for speedy trial in offences under the Special Act, has observed as under:-

“17. When stringent provisions have been prescribed under an Act such as TADA for grant of bail and a conscious decision has been taken by the legislature to sacrifice to some extent, the personal liberty of an under trial accused for the sake of protecting the community and the nation against terrorist and disruptive activities or other activities harmful to society, it is all the more necessary that investigation of such crimes is done efficiently and an adequate number of Designated Courts are set up to bring to book persons accused of such serious crimes. This is the only way in which society can be protected against harmful activities. This would also ensure that persons ultimately found innocent are not unnecessarily kept in jail for long periods.”

41. This Court prior to dictating of the present appeal raised a query to learned Additional Public Prosecutor for State with regard to specific stage of the trial. We are informed that total 497 witnesses were cited, out of which 198 witnesses were dropped and so far 282 witnesses have already been examined and only 17 witnesses are left to be examined. We are informed that the learned Special Court is conducting proceedings on every Saturday so as to expedite conclusion of trial, which is already at its fag end. However, in the peculiar facts of the present case and keeping in view that the appellant is behind bars since the 2008, we direct the concerned Special Court to conclude the trial in the present matter by taking it up at least twice a week.



42. In view of our afore-noted discussion, the present appeal is hereby dismissed. We, however, add that the observations made hereinabove are tentative in nature and learned Trial Court shall not take the same as final expression on the merits of the case.

(SURESH KUMAR KAIT)
JUDGE

(SHALINDER KAUR)
JUDGE

APRIL 29, 2024
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