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IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 21st October, 2024**Date of Decision: 14th November, 2024*

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CRL.A. 576/2024

JAVED ALI @ JAVED

.....Appellant

Through: Mr. Aarif Ali, Mr. Pankaj Tiwari, Mr. Mujahid Ahmad and Mr. Dharendra Kumar Verma, Advocates.

versus

NATIONAL INVESTIGATION AGENCY

.....Respondent

Through: Mr. Rahul Tyagi, SPP for NIA with Mr. Sangeet Sibou, Advocate, Mr. Jatin, APP for NIA with Mr. Aniket, Advocate and Mr. Vikas Walia, APP for NIA.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present appeal under Section 21(4) of the National Investigation Agency Act, 2008 read with Section 482 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') seeks the following prayers: -

“a) Allow the appeal and set aside the order dismissing the application via the impugned order dated 22.04.2024 passed by the Ld. Additional Sessions Judge, ASJ-03 / Special Court (NIA), New Delhi, arising out of FIR No. RC- 20/2017/NIA/DLI and further, direct the jail authority to release the appellant from the Jail in the present case and/ or;

b) pass such further orders as this Hon'ble Court may deem fit.”



2. The case of the NIA-Respondent against the present Appellant, as per the reply dated 21.08.2024, filed to the present appeal is as under: -

“1. That in pursuance to the Order No 11011/46/2017-IS-IV dated 27.11.2017 issued by the Ministry of Home Affairs, Government of India, the National Investigation Agency (hereinafter referred to as "NIA"), PS New Delhi has registered a case vide FIR no. RC-20/2017 /NIA/DLI dated 27.11.2017 under sections 120B, 468 & 471 of the Indian Penal Code; sections 17, 18, 18B, 19, 20, 21, 38, 39 & 40 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as “UA (P) Act, 1967”); section 12 of the Passport Act; section 34 of the Aadhar Act; section 7 & 25 of the Arms Act.

2. That, the case has been registered based on the allegations that the proscribed terrorist outfit Laskar-e-Taiba (LeT) based in Pakistan has activated its network based in UAE, to send money to LeT operatives, based in India for reconnaissance of targets for carrying out attacks. One of the LeT operatives operating in India has been identified as Shiekh Abdul Naeem@ Sohail Khan (A-1), who has already established his base in Bihar, Odisha, UP and Jammu and Kashmir and is on the lookout for possible targets in and around Delhi. He has also established contacts with other LeT operatives in India, UAE and is regularly taking directions from Amzad@ Rehan (A-8), LeT commander based in Pakistan and in charge of operations in India, Bangladesh, Nepal, and Maldives. On 28.11.2017, accused Shaikh Abdul Naeem @ Sohel Khan (A-1) was arrested at Charbagh, Lucknow, Uttar Pradesh. He was arrested for his involvement in raising funds from the main operatives of Lashkar-e-Taiba (LeT) based Pakistan for terrorist activities in India.

3. During investigation, it was established that accused Bedar Bakht @ Dhannu Raja (A-2), Towseef Ahmad Malik @ Tipu (A-3), Mafooz Alam, Habib Ur Rehman (A-9) and Amzad @ Rehan @ Abdullah Rashid @ Abdul Aziz @ Wali (A-8) had arranged shelter, logistics, mobile phones to accused Shaikh Abdul Naeem@ Sohel Khan (A-1), raised funds for the him and had also facilitated him in engaging fake identity as Sonu/Sohel Khan who is actually Shaikh Abdul Naeem (A-1).



4. That, Shaikh Abdul Naeem@ Sohail Khan (A-1), previously sentenced to capital punishment for possession of special category of explosives vide judgement dated 11.12.2018 by fast-track court 1, At Bongaon, North 24 Parganas U/S 419/420/468/469/471/121/121A/122/124A/120B in Case No. 179/2007 of Bongaon PS dated 04.04.2007.

5. That, during investigation of the present case, it was revealed that accused/appellant Javed Ali @Javed (A-11) son of Mohammad Imran, resident of Village- Khampur, Post Office- Khudda, Police Station Chapar, District- Muzaffamagar, Uttar Pradesh went to Riyadh, Saudi Arabia on work permit and he came in to contact with accused Gul Nawaz (Accused now discharged, hereinafter read as AD-10) (AD-10) resident of Phulas, Muzaffamagar, Uttar Pradesh, who was working as a taxi driver at Riyadh, Saudi Arabia.

6. Investigation revealed that in the year 2017, accused/appellant Javed (A-11) came into contact with one Zakir, resident of Pakistan, Zakir told the accused Javed Ali @Javed (A-11), that he wanted to send Rs. 3,50,000/- (Rupees Three Lakh Fifty Thousand) to India to Accused Shiekh Abdul Naeem @ Sohail Khan (A-1) at Muzaffarnagar, Uttar Pradesh. Consequently, accused Javed Ali @ Javed (A-11) took an amount of Riyal-20,425/- (Twenty Thousand Four Hundred and Twenty- Five-Riyal currency of Saudi Arabia) from Zakir along with mobile number of recipient accused Sheikh Abdul Naeem@ Sohail Khan (A-1).

7. That the accused/appellant Javed Ali @ Javed (A-11), living in Saudi Arabia had sent Rs. 3.5 lakh through Gul Nawaz (AD-10), also resident of Saudi Arabia, to be delivered to the Sheikh Abdul Naeem @ Sohail Khan (A-1). The Appellant had sent the said funds to Gul Nawaz (AD-10), who further sent the money to Dinesh Garg (Accused now discharged, hereinafter read as AD-6) (AD-6). On the instructions of Gul Nawaz (AD-10), the accused turned approver Abdul Samad (Accused turned approver witness, hereinafter read as A/W-5) (A/W-5) had collected Rs 3.5 Lakh from the Dinesh Garg (AD-6) and asked the accused Sheikh Abdul Naeem@ Sohail Khan (A-1) to arrive at Roorkee to collect the aforesaid amount from him. The name "Sohel" and mobile number of accused Sheikh Abdul Naeem @ Sohail Khan (A-1) and amount was given to the accused



turned approver Abdul Samad (A/W-5). However, the handover of the said terror fund could not take place as Sheikh Abdul Naeem@ Sohail Khan (A-1) denied to show his identity card to the approver Abdul Samad (A/W-5). Further on the directions of Gul Nawaz (AD-10), Abdul Samad (A/W-5) denied delivery of money to accused Sheikh Abdul Naeem@ Sohail Khan (A-1).

8. That, during the investigation, it was further revealed that accused/ appellant Javed Ali @Javed (A-11) upon not able to deliver the foresaid amount to accused Shaikh Abdul Naeem @ Sohail Khan (A-1), instead delivered it to his father i.e. accused Mohd Imran (A-12) through accused turned approver Abdul Samad (A/W-5). Mohd Imran (A-12) wilfully held the aforesaid amount of Rs. 3.5 Lakhs, actually meant for the use of the accused Shaikh Abdul Naeem @ Sohail Khan (A-1), which amounts to "Proceeds of terrorism".

9. That, accused Javed Ali @ Javed (A-11) was arrested on 10.11.2019 and during the personal search of the accused/appellant, a coloured photograph was recovered and seized. Upon interrogating accused/appellant, he disclosed and identified the person in the seized photograph as Zakir resident of Pakistan from whom the appellant received Rs. 3.5 Lakh to further deliver it to accused Shaikh Abdul Naeem @ Sohail Khan (A-1) at Muzaffarnagar UP.

10. That, upon further investigation, it surfaced that accused/appellant Javed Ali @ Javed (A-11) made several VoIP calls (Voice over Internet Protocol) to accused Shiekh Abdul Naeem @ Sohail Khan (A-1) and out of them one audio file numbered as +5492403-20171116170012.aac was found in the extracted data, received from CERT-In vide its report dated 27th February 2017 in respect of the mobile phone, 'ONE PLUS A5000, marked as X3-MOB, which was seized from the accused Shaikh Abdul Naeem@ Sohail Khan (A-1) at the time of his arrest on 28.11.2017. The said audio file has established that on 16.11.2017 and 17.11.2017, the accused Shaikh Abdul Naeem@ Sohail Khan (A-1) had been in contact with the accused Javed Ali@ Javed (A-11). The Appellant was the user of VOIP numbers +5492403 and ISD numbers +916552507527 I +966552507527 in Saudi Arabia. Transcript of this voice (D-



297) clearly establish that accused Javed Ali @ Javed was in touch with Zakir and had conspired for raising, collecting, and transferring terror fund to LeT operative accused Shaikh Abdul Naeem@ Sohel Khan (A-1).

11. That, during investigation, the voice clip recovered from the mobile data of accused Shaikh Abdul Naeem @ Sohel Khan (A-1) and the sample voice of accused Javed Ali @ Javed (A-11) have been forwarded to the Director, CFSL CBI, CGO Complex, New Delhi vide letter No.RC-20/2017/NIA/DLI/15561 dated 06.12.2019 for the purpose of examination, matching and expert opinion. As per the report vide No. CFSL-2019/P-1118 dated 25.09.2020 and certificate No.TC-5846 dated 25.09.2020 (D- 308) it was opined that the sample voice of accused Javed Ali @ Javed (A-11) matched with the voice of one person who was speaking in the said voice clips recovered from the mobile data of A-1. It was established that Javed Ali@ Javed (A-11) had spoken with accused Shaikh Abdul Naeem @ Sohail Khan (A-1) on 16.11.2017 and 17.11.2017 in connection with the supply of fund to A-1 on the direction of his handlers located in Saudi Arabia and Pakistan. CFSL report dated 06.12.2019 annexed is ANNEXURE-R-1.

12. That, after completion of the investigation charge sheet was filed against the accused persons after obtaining permission/sanction of the Central Government under section 45 of the UA (P) Act, 1967 after carefully examining the case record and relevant material. Thereafter, the Ld. NIA Special Court has taken cognizance of the offences in the present case.

13. That, the Ld. Special Court vide Order dated 10.06.2022 has also framed charges under section 120-B IPC and Sections 17, 18 & 40 of the UA (P) Act, 1967. Thus, charges against the appellant have been framed under offences which are part of Chapter IV & VI of the UA (P) Act, 1967 and therefore the Ld. Special Court has given a finding on the prima facie offences against the appellant.”
(emphasis supplied)

SUBMISSIONS ON BEHALF OF THE APPELLANT

3. Learned Counsel appearing on behalf of the Appellant has submitted that the latter is a permanent resident of District Muzaffarpur, Uttar Pradesh



and had been working in Saudi Arabia as a labourer/carpenter for his livelihood. It is further submitted that, even as per the case of the prosecution, he had never met Accused No. 1, i.e., Shaikh Abdul Naeem @ Sohel Khan (A-1). Learned Counsel has further contended that the Appellant is a victim of circumstances and has been falsely implicated for alleged attempted delivery of sum of Rs. 3.5 Lakhs to Accused No. 1. It was pointed out that the case of the prosecution is that the present Appellant (arrayed as Accused No. 11 in the chargesheet) was living in Saudi Arabia at that relevant point in time and it was Gul Nawaz (A-10), who was raising, receiving, collecting and sending funds from Saudi Arabia to India through illegal (*Hawala/Hundi*) channels and, in India, the accused, who has now become approver, Abdul Samad (originally arrayed as Accused No. 5 in the chargesheet; AW-2/A-5), was collecting the said money from Dinesh Garg (A-6) and Adish Kumar Jain (A-7) and had attempted to disburse the said money, as per the directions of Gul Nawaz (A-10), to Shaikh Abdul Naeem @ Sohel Khan (A-1), who is an active operative of *Lashkar-E-Taiba* (for short, 'LeT'), a proscribed organization in India. It is also the case of the prosecution that the Appellant had sent a sum of Rs. 3.5 Lakhs to Gul Nawaz (A-10), who had further sent the said money to Dinesh Garg (A-6). It is pointed out by learned counsel for the Appellant that the learned Special Judge, NIA, *vide* order on framing of charge dated 10.06.2022 had discharged all the aforesaid four proposed accused persons, i.e., the said approver Abdul Samad (A-5), Dinesh Garg (A-6), Adish Kumar Jain (A-7) and Gul Nawaz (A-10).

4. It was pointed out that, on instructions of Gul Nawaz (A-10), Abdul Samad (A-5) had collected Rs. 3.5 lakhs from Dinesh Garg (A-6) and asked Shaikh Abdul Naeem @ Sohel Khan (A-1) to arrive at Roorkee and collect



the aforesaid amounts. It is submitted that the handover of the sum could not take place as Shaikh Abdul Naeem @ Sohel Khan (A-1) denied to show his identity card to Abdul Samad (A-5) and the said amount was ultimately delivered to the father of the present Appellant, i.e., Mohd. Imran (A-12) through the said Abdul Samad (A-5). It is submitted that apart from the aforesaid circumstance, there is nothing on record to show that the Appellant had knowingly sent the said sum to Shaikh Abdul Naeem @ Sohel Khan (A-1) to support his alleged activities relating to LeT. It was further submitted that the present appellant has been in custody since 10.11.2019 and has undergone incarceration for more than 5 years and the trial is likely to take substantial period of time to conclude. The prosecution has cited 221 witnesses in the chargesheet and only 9 prosecution witnesses have been examined so far.

5. Learned counsel for the Appellant has placed reliance on **Union of India v. KA Najeeb, 2021 3 SCC 713; Javed Gulam Nabi Shaikh v. State of Maharashtra & Anr., 2024 SCC OnLine SC 1693; Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh, (2024) 8 SCC 293; 2024 SCC OnLine SC 1755**, to contend that delay in trial is sufficient ground for this Court to grant bail despite rigours of Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967, (for short, 'UAPA').

SUBMISSIONS ON BEHALF OF THE NIA/RESPONDENT

6. Learned SPP for NIA has submitted, on the lines of the reply as quoted hereinabove and, has submitted that the allegations made in the chargesheet have been found to be *prima facie* true and on the basis of the said allegations charges have been framed *qua* the present Appellant by the learned Special



Judge for the offences punishable under Section 120B of the IPC and Sections 17, 18, 40 of the UAPA *vide* order on framing of charge. It is submitted that in view of the above, rigours of Section 43D (5) of the UAPA would be attracted. Reliance has been placed upon the following judgments:

- i) **Gurwinder Singh v. State of Punjab And Anr., (2024) 5 SCC 403¹;**
- ii) **Umar Khalid v. State of National Capital Territory of Delhi, 2022 SCC OnLine Del 3423: 2023 Cri LJ 980;**
- iii) **Mohd. Amir Javed v. State (NCT of Delhi), 2023 SCC OnLine Del 5777.**

7. Learned SPP for NIA also submitted that the case of the prosecution is based upon an audio file which records a call between the present Appellant and Shaikh Abdul Naeem @ Sohel Khan (A-1) on 16th/17th November, 2017, when the aforesaid Abdul Samad did not complete the money transaction. It is submitted that the said conversation was retrieved from A-1's mobile phone after his arrest. The transcript of the said call is D-297 (annexed with the chargesheet) and the FSL report regarding the identification of the voice of the present Appellant is relied upon as D-308 and the same has been filed alongwith the chargesheet. Based on the aforesaid, it is submitted that the learned Special Judge has rightly rejected the bail application of the present Appellant while coming to conclusion that the allegations made in the chargesheet are *prima facie* true.

¹ Review Petition (Crl.) No. 299/2024 against this judgment has been dismissed *vide* order dated 16th July, 2024: 2024 SCC OnLine SC 1777



ANALYSIS AND FINDINGS

8. The prosecution case essentially revolves around Shaikh Abdul Naeem @ Sohel Khan (A-1). It is alleged that the aforesaid accused is an operative of proscribed terrorist organization LeT, which is based in Pakistan. The case of the prosecution is that the aforesaid accused was previously sentenced to capital punishment for possession of special categories of explosive *vide* judgment dated 11.12.2018 by learned Fast Track Court-1 at Bongaon, North 24 Parganas, under Sections 419/420/468/469/471/478/121/121A/122/124A/120B/126 of the IPC in Case No. 179/2007 of PS Bongaon dated 04.04.2007. It is pointed out that during the transport of the said accused (A-1) from Maharashtra to Kolkata for court attendance, he had escaped from the custody of the police near Raigarh, Chattishgarh Railway Station on 24.08.2014. The following has been recorded in the chargesheet: -

“17.3 Investigation has further established that the accused Shaikh Abdul Naeem @ Sohel Khan [A-1], after his escape from the Police custody on 24 August 2014, arrived at Ramnagar, Varanasi and through ‘Nimbuuz’ a messaging application re-established his contact with his handler Amzad @ Abdullah Rashid @ Rehan @ Abdul Aziz @ Wali[A-8] who had arranged his further shelter at Goplaganj and Siwan, Bihar. Accordingly the accused Shaikh Abdul Naeem @ Sohel Khan [A- 1] shifted his base from Ramnagar, Varanasi, UP to Gopalganj, Bihar in October- November 2014. Investigation has established that with the active connivance of his handlers and associates including accused Bedar Bakht @ Dhannu Raja [A-2] and the accused turned approver Mahfooz Alam [AW-1/ A-4] and others, obtained fake identity documents and thus established himself as Sohel Khan , an assumed and fake name, at Gopalganj , Bihar and received , raised and collected money ‘terror fund’ from the UAE through Western Union Services Pvt . Ltd .”

9. It is further recorded in the chargesheet that after arrest of the aforesaid



Accused (A-1), during investigation, the following was revealed: -

17.23 During the investigation, it has been established that the Shaikh Abdul Naeem @ Sohel Khan [A- 1] has regularly received funds originating from the UAE and Saudi Arabia. The accused Shaikh Abdul Naeem @ Sohel Khan [A- 1] has also received Rs 4.6 Lakh in August 2016 at Aurangabad through unknown hawala channel, out of which Rupees 4.29 Lakh has been deposited by him in Federal Bank branch Jalgaon Maharashtra into his own bank account in the Federal bank, Gopal Ganj, opened in the his name as ‘Sohel Khan’.

17.24 Investigation has established that accused -Shaikh Abdul Naem @ Sohel Khan [A-1] had also attempted to receive and collect funds from his handler in the Saudi Arabia sent by them through the hawala operators, based in the Saudi Arabia to hawala operators based in India including the accused Adish Kumar Jain [A-7] and accused Dinesh Garg@ Ankit Garg [A-6] and their hawala conduits based in Muzaffarnagar, UP. The investigation has established the telephonic interconnection between these hawala operators based in the Saudi Arabia and India. The *modus operandi* unearthed during the investigation shows that the hawala operators based in India including the accused Adish Kumar Jain [A-7] and accused Dinesh Garg @ Ankit Garg [A-6] and others receive cash through hawala channels and also the gold smuggled into India from the Saudi Arabia through gold smugglers, who are mostly the conduits of the aforementioned hawala operators. These conduits at the Saudi Arabia end use Indian from Muzaffarnagar, U.P., based in Reyadh, Saudi Arabia, to collect money from different sources and send it to India through this hawala channel. These hawala operators, most of whom are Indian, now in the Saudi Arabia, are in contact with hawala operator in India including the accused Adish Kumar Jain [A-7] and accused Dinesh Garg @ Ankit Garg [A-6] and hawala conduits based in Muzaffarnagar, UP. These accused hawala operators also sometimes provide cash in exchange of gold smuggled by these hawala operators from the Saudi Arabia through their conduits.

17.25 Investigation has further established that this hawala channel has been used by LeT, the Proscribed terrorist organization in India, to send money (terror fund) to their members / cadres, active in India. In this case, the Amzad @ Abdullah Rashid @ Rehan @ Abdul Aziz @ Wali[A-8] and accused Habib-ur Rehman [A-9], the handlers of the accused Shaikh Abdul Naeem @ Sohel Khan [A-1], gave money to the accused Javed (A-11) son of accused Mohd Imran (A- 12),



resident of Khampur, Khudda, Muzaffarnagar, UP, who is in the Saudi Arabia. The aforesaid Javed in connivance with accused Gul Nawaz (A-10) son of Wamis, resident of Phullas, Muzaffarnagar, UP, now in the Saudi Arabia, sent Rupees 3.5 Lakh from Saudi Arabia through the aforesaid hawala channel to Shaikh Abdul Naeem @ Sohel Khan [A- 1].

17.26 Investigation has further revealed that on 16.11.2017, the accused Javed (A-11), using his Saudi mobile number 00966552507527 has contacted the accused Shaikh Abdul Naeem @ Sohel Khan [A- 1] on his mobile number 7609831582 and asked him to go to Deoband and collect the money. On 17.11.2017, the accused Shaikh Abdul Naeem @ Sohel Khan [A- 1] had gone to Deoband and thereafter had reached at Roorkee Roadways to receive Rupees 3.5 Lakh through hawala channel. During their telephonic conversation on 16.11.2017, the aforesaid accused Javed (A- 11) had given / shared his Saudi Arabia mobile number 00966552507527 by making a missed call at mobile number 7609831582 of the accused Shaikh Abdul Naeem @ Sohel Khan [A-1]. The accused Gul Nawaz (A-10), who is maternal cousin of the accused turned approver witness Abdul Samad [AW-2 /A-5], had sent / shared the name, mobile number and amount to be given to the accused Shaikh Abdul Naeem @ Sohel Khan [A- 1] through WhatsApp to the accused turned approver witness Abdul Samad [AW-2 / A-5], his hawala conduit / courier operating in the Districts of Saharanpur, Muzaffarnagar and Bijnour [U.P] .

17.27 Investigation has further revealed that on 17.11.2017, the accused turned approver witness Abdul Samad [AW- 2 / A-5] , user of mobile number 919639448468, as directed by accused Gul Nawaz (A-10) , his handler in the Saudi Arabia , collected Rs 5 Lakh from the accused Dinesh Garg @ Ankit Garg [A-6], who runs a shop at Sarafa Bazar, Muzaffarnagar, U .P.. He was arrested on 08.02.2018 along with another Jeweler and hawala operator accused Adish Kumar Jain [A -7], owner of M /S Arihant Jeweler, Muzaffarnagar, UP].

17.28 Investigation has established that on 17.11.2017, the accused Shaikh Abdul Naeem @ Sohel Khan [A- 1] had met the accused turned approver witness Abdul Samad [AW-2 / A-5] at Roorkee Roadways [bus stand]. The telephonic contact between the accused Shaikh Abdul Naeem @ Sohel Khan [A- 1], user ' of mobile number ' 7609831582' and the accused turned approver witness Abdul Samad [AW-2 / A-5], user of mobile number ' 9639448468' on 17.11.2017 has been established through CDR analysis of their aforesaid mobile



numbers. The accused turned approver witness accused Abdul Samad [AW - 2 / A- 5] had met the accused Shaikh Abdul Naeem @ Soheli Khan [A-1], however, the transaction of Rupees 3.5 Lakh could not be completed as the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1] did not want to produce any credible identity proof or document except his aforesaid mobile number as his identity.

17.29 During the investigation, it has surfaced that the accused Javed [A- 1] son of Mohd Imran, originally resident of Khampur, Khudda, Muzaffarnagar, UP, now in the Saudi Arabia, had sent Rupees 3.5 Lakh through the accused Gul Nawaz [A- 10] , son of Wamis, resident of Phullas, Muzaffarnagar , UP, now in the Saudi Arabia, to be delivered to the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1] . On the direction of the accused Gul Nawaz [A-10], the accused turned approver witness Abdul Samad [AW -2 / A- 5], has collected Rupees 3.5 Lakh from the accused Ankit Garg @ Dinesh Garg [A-4] on 17.11. 2017 and had asked the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1] to arrive at Roorkee Roadways [bus stand] to collect the aforesaid amount from him. The name and mobile number of accused Shaikh Abdul Naeem @ Soheli Khan [A - 1] was given to the accused turned approver witness Abdul Samad [AW-2 / A-5] by the accused Gul Nawaz [A - 10] from the Saudi Arabia.

17.30 During the investigation, one audio file numbered as +5492403-20171116170012.aac was found in the extracted data, received from CERT- In vide its report dated 27 February 2017 in respect of the mobile phone , 'ONE PLUS A5000, 7.1.1 NMF26X 327 with IMEI number 8651240341927345, marked as X3-MOB, seized from the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1] at the time of his arrest on 28.11.2017 , has established that on 16.11.2017 and 17.11.2017, the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1] has been in telephonic communication with the accused Javed [A- 11] son of Mohd Imran, resident of Khampur, Khudda, Muzaffarnagar, UP, an hawala operator in the Kingdom of Saudi Arabia, user of VOIP numbers +5492403 and ISD numbers +916552507527 / +966552507527 in the Saudi Arabia.

17.31 Investigation has established that the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1] had many contacts in the Saudi Arabia including his handler namely—Habib-ur-Rehman,— user of mobile numbers 00966553997172, 966596159826 and 966536503432.

17.32 Investigation has further established that Rupees Three Lakh Fifty Thousand, which accused turned approver Abdul Samad [AW- 2 / A-5] had received from accused Dinesh Garg @ Ankit Garg [A-



6], has originally come from his handler in the Saudi Arabia, through accused Habib-ur-Rehman [A- 9], who in turn send it to India through the international hawala channel with accused Javed [A - 11] accused Gul Nawaz [A-10] on Saudi Arabia end and-accused Dinesh Garg @ Ankit Garg [A-6]-accused turned approver Abdul Samad [AW-2 / A-5] on Indian end, was actually to be delivered to the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1], an active operative of LeT, who has been active in the preparation and furtherance of terrorist activities in India.

17.33 During the investigation, it has been further established that there were several calls and messages exchanged between the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1] and the accused Habib-ur-Rahman @ Habib [A-9] during the period of the aforesaid transaction i.e 16.11.2017 to 18.11.2017. Further the accused Javed [A- 11] son of accused Mohd Imran [A-12] had also made several VOIP calls using VOIP number + 5492403 to the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1] on his mobile number 7609831582 . Further he has made the call using same VOIP number + 5492403 to his father accused Mohd Imran [A- 12] on 18 November 2017. Out of the several aforesaid VOIP calls, one was attended by the accused Shaikh Abdul Naeem @ Soheli Khan [A- 1] and same has been found recorded on his mobile number as audio clip of same date and time.”

10. On the basis of the aforesaid chargesheet and material placed on record, the Appellant has been charged for the commission of offences punishable under Section 120B of the IPC and Sections 17, 18, 40 of the UAPA. But for the purposes of bail, this Court can examine if the Appellant can make out a *prima facie* case for the bail satisfying the requirement of Section 43D (5) of the UAPA. Hon’ble Supreme Court in **Javed Gulam Nabi Shaikh (supra)**, while dealing with an investigation by the NIA and where the Accused/Appellant had been in incarceration for four years, had observed and held as under: -

“**20.** We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”



11. The Hon'ble Supreme Court in **Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352**, while considering the parameters of granting bail in view of Section 37 of the NDPS Act, wherein, one of the requirements of the Court to grant bail to the accused is that the Court should be satisfied that the accused is not guilty, had observed and held as under: -

“**20.** A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

21. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in *Union of India v. Rattan Malik*¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. *Satender Kumar Antil supra*). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

(emphasis supplied)



12. In **Shoma Kanti Sen v. State of Maharashtra And Another, (2024) 6 SCC 591**, the Hon'ble Supreme Court after comparing the provisions of Section 37 of the NDPS Act and Section 43D (5) of the UAPA, had observed and held as under: -

“22. In **Zahoor Ahmad Shah Watali [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383]**, it has been, inter alia, held : (SCC pp. 24-27, para 23)

“23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. **Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and McoCa. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well.** Notably, under the special enactments such as TADA, McoCa and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is “not guilty” of the alleged offence. **There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is “not guilty” of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is “prima facie” true. By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain**



of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is “prima facie true”, as compared to the opinion of the accused “not guilty” of such offence as required under the other special enactments. **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.”**

(emphasis supplied)

13. Again recently, the Hon’ble Supreme Court in **Jalaluddin Khan v. Union of India, 2024 SCC OnLine SC 1945**, while dealing with the provision of Section 43D (5) of the UAPA, has observed and held as under: -

“13. Learned ASG relied upon a decision of this Court in the case of Gurwinder Singh v. State of Punjab². This Court extensively considered its earlier decision in the case of National Investigation Agency v. Zahoor Ahmad Shah Watali³, which deals with interpretation of Section 43D(5). Paragraph 32 of the said decision reads thus:

“32. In this regard, we need to look no further than Watali case [NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383] 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 paras 23 to 24 and 26 to 27, the following 8-point propositions emerge and they are summarised as follows:

32.1. Meaning of “prima facie true”:

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.

32.2. Degree of satisfaction at pre charge-sheet, post charge-sheet



and post-charges — compared:

“26. ... 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 of 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.”

32.3. Reasoning, necessary but no detailed evaluation of evidence:

“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.”

32.4. Record a finding on broad probabilities, not based on proof beyond doubt:

“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.”

32.5. Duration of the limitation under Section 43-D(5):

“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.”

32.6. Material on record must be analysed as a “whole”; no piecemeal analysis

“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.”

**32.7. Contents of documents to be presumed as true:**

“27. ... The Court must look at the contents of the document and take such document into account as it is.”

32.8. Admissibility of documents relied upon by prosecution cannot be questioned:

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.”

(emphasis added)

14. There is one more decision of this Court in the case of Thwaha Fasal v. Union of India⁴, which again deals with the scope of Section 43D(5) of UAPA. After considering the decision in the case of Zahoor Ahmad Shah Watali³, in fact, in paragraph 24, the case has been extensively reproduced. Thereafter, in paragraph 26, this Court held thus:

“26. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. **If the court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the court while examining the issue of prima facie case as required by subsection (5) of Section 43-D is not expected to hold a mini trial. The court is not supposed to examine the merits and demerits of the evidence. If a charge-sheet is already filed, the court has to examine the material forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the court has to take the material in the charge-sheet as it is.**”

(emphasis added)

15. As held in the case of Thwaha Fasal⁴, the Court has to examine the



material forming part of the charge sheet to decide whether there are reasonable grounds for believing that the accusations against the person applying for bail are *prima facie* true. While doing so, the court must take the charge sheet as it is.”

(underline supplied)

14. In view of the aforesaid discussion, this Court is to consider whether the Appellant, despite being formally charged for the offences punishable under Section 120B of the IPC and Sections 17, 18, 40 of the UAPA, can make out a *prima facie* case for grant of bail satisfying the requirement of Section 43D (5) of the UAPA. This Court in terms of the aforesaid parameters, will proceed to examine the case of the present Appellant. Sections 17, 18 and 40 of the UAPA read as under: -

“**17. Punishment for raising funds for terrorist act.**—Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Explanation.—For the purpose of this section,—

(a) participating, organising or directing in any of the acts stated therein shall constitute an offence;

(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and

(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under Section 15 shall also be construed as an offence.]

18. Punishment for conspiracy, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or 33[incites, directs or knowingly facilitates] the commission of, a terrorist act or any act



preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

40. Offence of raising fund for a terrorist organisation.—(1) A person commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation,—

(a) invites another person to provide money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(b) receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism.

⁶⁸[Explanation.—For the purposes of this sub-section, a reference to provide money or other property includes—

(a) of its being given, lent or otherwise made available, whether or not for consideration; or

(b) raising, collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency.]

(2) A person, who commits the offence of raising fund for a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding fourteen years, or with fine, or with both.”

15. As pointed out earlier that the role assigned to the present Appellant is with regard to an attempted handing over of Rs. 3.5 Lakhs to the Accused No.1, who is an alleged LeT operative and thus providing him funds to further his activity. The prosecution relies upon a transcript of a conversation between the Appellant and Accused No.1. It is the case of the prosecution that the voice of the present Appellant had matched with the conversation that took place between the present Appellant and the Shaikh Abdul Naeem @ Sohail Khan (A-1), which was retrieved from the phone of the Accused No.1. The English translation of the transcript of the said conversation relied upon by the prosecution is as under: -



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TRANSLATION OF DOCUMENT NO. BEARING D-296/7 & D-297/8 OF ANNEXURE: P-17.

CALL / VOICE RECORDING OF SOHEL AND JAVED.

Sohel makes the call:-

Javed: Hello Hello Hello
Sohel: Assalamualikum
Javed: Walikumasslam bhai, who is this calling,
Sohel: Okay Okay
Javed: Hello brother who is this.
Sohel: I am Sohel.
Javed: Yes brother, Sohel.
Sohel: Yes, Sohel,
Javed: where are you?
Sohel: I am in Banaras.
Javed: In Banaras.
Sohel: Yes.
Javed: when are you coming to Deoband?
Sohel: I will reach Deoband by tomorrow morning.
Javed: at what time.
Sohel: today in the evening. Can reach by tomorrow evening.
Javed: tomorrow evening by what time.
Sohel: Yes.
Javed: You only tell me the time.
Sohel: by 4:00 - 5:00.
Javed: by 4:00 to 5:00.
Sohel: Yes, ok.
Javed: okay, you start travelling and your phone shouldn't be switched off.



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- Sohel: Okay.
- Javed: is it okay for tomorrow evening by 04:00 – 05:00 PM.
- Sohel: It's okay, can I call on this number?
- Javed: haven't you received missed call earlier?
- Sohel: had called on another number. This seems to be an internet number.
- Javed: There is 27 in the last.
- Sohel: Okay Okay, there is 27 in the last.
- Javed: Yes.
- Sohel: Okay.
- Javed: If somebody gives you a missed call and don't pick up the phone then you are of no use.
- Sohel: meaning.
- Javed: You don't pick up the phone.
- Sohel: Phone fell down in the water.
- Javed: Your number has come, you can reach by 04:00 – 05:00 PM tomorrow. It is not difficult. Is it correct, Hello?
- Sohel: Okay, by tomorrow evening.
- Javed: reach by 04:00 PM. It is not possible to reach by 05:00PM.
- Sohel: okay, it's alright.
- Javed: If you reach by 03:00 pm and it's too early probably.
- Shoel: I will see.
- Javed: don't you have any known person, any friends in Muzaffamagar or Deoband.
- Sohel: In Muzaffamagar?
- Javed: Yes or in Deoband.
- Sohel: No, I don't have any known person.
- Javed: Okay.
- Sohel: Let's see.



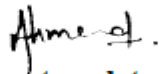
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Javed: what name did you tell?
Sohel: Sohel.
Javed: See, your mobile is ringing.
Sohel: Yes, Yes.
Javed: is it okay.
Sohel: there is 27 in the last.
Javed: Give a miss call on this number. Okay?
Sohel: Okay, brother.
Javed: Will you definitely reach tomorrow?
Sohel: Okay Okay I will go, anything else.
Javed: don't point out my mistake later on, Okay?
Sohel: tell me back.
Javed: what do you say?
Sohel: I will reach between 03:00 to 05:00 PM tomorrow.
Javed: Brother as soon as you reach there will be better. Otherwise later on there will be some problems.
Sohel: Okay, okay, it is okay.
Javed: Okay.
Sohel: alright.
Javed: He will not meet you later on. If you reach by 12:00 or in the morning, it will be better.
Sohel: I will try to reach as early as possible.
Javed: Okay, alright. Give me a miss call whenever you reach there.
Sohel: Okay, correct.
Javed: You told your name Sohel?
Sohel: Yes, Sohel.
Javed: Okay.



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Zakir: Sohel was telling, he is also telling the same name.
Javed: Okay, Brother.
Sohel: Okay, Okay.


/// True translated copy ///

16. As per the case of the prosecution, the present Appellant was sitting along with one Zakir who at the relevant time, when this conversation was going on, was in constant touch with Habib-ur-Rahman (A-9), who is the alleged handler of the Accused No.1, i.e., Shaikh Abdul Naeem @ Sohel Khan (A-1). The aforesaid circumstance has been placed on record to demonstrate that the present Appellant knew that the money was being sent to Shaikh Abdul Naeem @ Sohel Khan (A-1), who is a LeT operator and in support of his activity in India.

17. It will be relevant to note here that the case of the prosecution itself is that Shaikh Abdul Naeem (A-1), after his escape from custody, changed his name to Sohel Khan based on the identity document provided by his associates. There is nothing on record to show that the present Appellant had knowledge about the existence of Shaikh Abdul Naeem (A-1) or the fact that he was LeT operative and had escaped from custody way back in 2014. The nature of the conversation as reflected from the transcript, in fact, shows that Shaikh Abdul Naeem (A-1) was referring to himself in his new assumed identity, i.e., Sohel Khan. The case of the prosecution is that Zakir, whose part of conversation as reflected in the transcript, was in constant touch with



Habib-ur-Rahman (A-9), who was stated to be the handler of Shaikh Abdul Naeem (A-1), is an incriminating circumstance against the present Appellant. It is pertinent to note that there is nothing on record to show that the conversation attributed to Zakir is of the person who is supposed to be known as Zakir. Secondly, assuming that the person referred to as Zakir is the one who was present at the time when the Appellant and Accused No.1 (Shaikh Abdul Naeem @ Soheli Khan) were having a conversation, the same would not lead to presumption that the present Appellant knew the real status of the person who was being addressed as Soheli. It is a matter of record that apart from the said transcript or the conversation placed on record, there is nothing else to connect the present Appellant with Accused No. 1 or for that matter with Habib-ur-Rahman (A-9). It is further a matter of record that the said money was never finally handed over to Shaikh Abdul Naeem @ Soheli Khan/A-1. There is no other circumstance or transaction placed on record by the prosecution to show that the present Appellant was in any way responsible for providing funds to Shaikh Abdul Naeem @ Soheli Khan/A-1 apart from the aforesaid failed transaction.

18. It has been the case of the prosecution that the present Appellant was dealing in money being sent through *hawala/hundi* channels and the person who was collecting and disbursing money, at the instructions of Gul Nawaz (A-10), was Abdul Samad (AW-2/A-5), who had later turned as approver witness, has been kept in Column 12 of the chargesheet, and now, stood discharged. It is also matter of record that Gul Nawaz (A-10) has also been discharged. It is pertinent to note that the said approver witness, Abdul Samad (AW-2/A-5), in his statement has not taken the name of the present Appellant.



19. In the totality of the facts and circumstances of the case, this Court is of the considered opinion that the Appellant has been able to satisfy the requirement of Section 43D (5) of the UAPA for grant of bail.

20. It is a matter of record that the Appellant has been in judicial custody since 10.11.2019. As per the Nominal Roll dated 13.08.2024, the Appellant, as on 12.08.2024, has undergone incarceration for 4 years 9 months and 3 days. Out of the 221 witnesses cited by the prosecution in the chargesheet, only 9 have been examined so far. Therefore, the trial is likely to take some time to conclude.

21. The present appeal is allowed. The impugned order dated 22.04.2024 is hereby set aside.

22. The Appellant is directed to be released on bail upon his furnishing a personal bond in the sum of Rs. 50,000/- alongwith two sureties of like amount to the satisfaction of the learned Special Court, further subject to the following conditions: -

- i. The memo of parties shows that the Appellant is a resident of Khampur, Khudda, Muzaffarnagar, Uttar Pradesh. In case of any change of address, the Appellant is directed to inform the same to the learned Special Court and the Investigating Officer.
- ii. The Appellant shall report to the concerned Investigating Officer of NIA at his Office on 1st Monday of every month at 04:00 PM and the concerned officer is directed to release him by 05:00 PM after recording his presence and completion of all the necessary formalities.
- iii. The Appellant shall not leave India without the prior permission of the learned Special Court.



- iv. The Appellant is directed to give all his mobile numbers to the Investigating Officer and keep them operational at all times.
 - v. The Appellant shall not, directly, or indirectly, tamper with evidence or try to influence the witnesses in any manner.
 - vi. The Appellant shall appear before the learned Special Court, as and when, the matter is going to be taken up for hearing.
 - vii. In case, it is established that the Appellant tried to tamper with the evidence, the Respondent/NIA will be at liberty to apply for cancellation of bail.
23. The appeal stands disposed of along with all the pending application(s), if any.
24. Needless to state that all the observations made in this judgment are to satisfy this Court whether a *prime facie* case for bail is made out or not *qua* the present Appellant only and nothing mentioned hereinabove is an opinion on the merits of the case of the Appellant or other Accused and the observations made herein are for the purpose of present appeal.
25. Copy of this judgment be communicated to the concerned Jail Superintendent for necessary information and compliance.
26. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA
(JUDGE)**

**PRATHIBA M. SINGH
(JUDGE)**

NOVEMBER 14, 2024/sn/bsr