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

% Reserved on : 07th August, 2023
Pronounced on: 18th September, 2023

\+ **CRL.A. 468/2023**

MOHD. AMIR JAVED ..... Appellant

versus

STATE (NCT OF DELHI) ..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Kartik Venu, Ms. Nitika Khaitan and Ms. Priya Vats, Advocates.

For the Respondent: Mr. Laksh Khanna, APP for the State with Insp. Vinay pal and SI Sachin, PS – Special Cell.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal has been filed under Section 21(4) of the National Investigation Agency Act, 2008 (NIA Act) read with Section 43D (5) of

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the Unlawful Activities Prevention Act, 1967 (UAPA) seeking setting aside of the impugned order dated 18th May, 2023 passed by the Ld. ASJ, Patiala House Courts, New Delhi in Sessions Case No. 61/2022 emanating from FIR No.243/2021, PS Special Cell, Delhi. By the impugned order, the appellant's application for grant of regular bail was dismissed. The appellant was arrested in the said FIR on 14th September, 2021 and has been in custody for about 20 months as on the date of the filing of this appeal, and has not been released for any period in the interim.

The FIR

2. The FIR was registered based on a reliable input received regarding a terror module planning a serial Improvised Explosive Device (IED) Blasts. As per the input, a group of entities were planning to undertake serial IED Blasts in India for which these multiple IEDs were arranged from unknown sources and apparently at an advance stage of preparation. It was suspected that an Okhla, Delhi based entity was an important part of this module having associates in various parts of the country including Uttar Pradesh and Maharashtra. This input was verified and corroborated through different sources and it emerged that a deep rooted conspiracy had been hatched by the terror module with its operatives in India to carry out the blasts. An in-depth investigation was lodged and the FIR was accordingly registered *inter alia* under Section 120B IPC.

The Investigation

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3. As per the State, a multi-pronged operation was launched, several teams were stationed at Mumbai and Lucknow, Prayagraj, Rae Bareilly, Pratapgarh in U.P. simultaneously. On 14th September, 2021, on the basis of intelligence gathered, simultaneous raids were carried out in different States. Initially, Jan Mohammed Sheikh @ Sameer Kalia was apprehended in the Golden Temple Train by a team from Kota, Rajasthan while on way to Delhi; thereafter, Osama @ Sami was apprehended from Okhla, Delhi; Mohammad Abu Bakar was apprehended from Sarai Kale Khan, Delhi; Zeeshan Qamar was apprehended from Prayagraj, U.P. and the appellant was apprehended from Lucknow, U.P. Consignment of two IEDs, two hand-grenades and two pistols alongwith rounds were recovered after the arrest of accused Zeeshan, at his instance. Another team apprehended Moolchandra @ Saaju @ Lala from Rae Bareilly, U.P. and later, accused Humaidur Rehman was arrested on 18th September, 2021. On the disclosure of accused Humaidur Rehman, two pistols were recovered from a small trench in a village area of Prayagraj at his instance.

4. Pursuant to interrogation, Sections 18, 20 of the UAPA, Sections 4, 5 of the Explosives Act and Section 25 of the Arms Act were added. During police remand, as per the State, further information was disclosed of the alleged conspiracy to receive similar consignments of IEDs. It was also revealed that one of the consignments was received by accused Humaidur Rehman on 05th September, 2021 which was placed at the house of the appellant and was later retrieved by the accused Humaidur Rehman alongwith his associates, including accused Zeeshan,

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from the house of the appellant on 12th September, 2021. This consignment was later recovered from Humaidur Rehman which contained two IEDs, two grenades and four pistols alongwith rounds. The alleged vehicles used in the conspiracy, a scooty No. UP32MB1925, Maruti Alto Car No.UP32BU2959 and Maruti XL6 Car No.UP70FJ7806 were taken into police possession.

The Chargesheet

5. Charge-sheet dated 08th February, 2022 was filed in the said matter against the appellant alongwith Jan Mohammad, Osama, Mohammad Abu Bakar, Moolchandra, Zeeshan Qamar, Humaidur Rehman under Section 120B IPC, Section 18, 20 of the UAPA, Section 25 of the Arms Act and Section 4, 5 of the Explosive Substances Act.

6. The Ld. APP drew attention to the deposition of witnesses under Section 164, Code of Criminal Procedure, 1973 (Cr.P.C.) in particular, witness Mohammad Tahir as per which the consignment containing arms and explosives were kept in a bag at the appellant's house from where Humaidur Rehman (who had collected the same in the presence of the witness) took it to Prayagraj and the witness was informed about the arms and explosives on the way to Prayagraj. The charge-sheet details out the full conspectus of the purported role of the various accused. In particular, as regards the appellant, it was stated that Humaidur Rehman was the brother of the appellant's brother-in-law Zil-

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ur-Rehman. The appellant was also involved in the business of selling dates and used to have transactions with Humaidur Rehman. On 05th September, 2021, Humaidur Rehman informed the task to the appellant and roped him for hiding the consignment. Further, the appellant provided Humaidur Rehman his father's car for transportation of the consignments and his full support. The consignment was handed over to the appellant with instructions to keep the bag in a safe place. As per the CDR analysis of the mobile number of accused persons, on 05th September, 2021, accused Humaidur Rehman called the appellant on which the appellant offered his father's car and they were in continuous touch at that time. The car in question which belonged to the appellant's father was the Maruti Alto Car No.UP32BU2959 which was allegedly used by the accused Humaidur Rehman for receiving the consignments from accused Osama and Mohammad Abu Bakar on 05th September, 2021.

Submissions on behalf of the Appellant

7. Learned counsel for the appellant submitted *inter alia* that the allegations against the appellant are entirely based upon the disclosure statement of co-accused and statement recorded under Section 164 Cr.P.C. by a witness Mohammad Tahir and call detail records of the appellant. According to him such allegations are unsubstantiated and are not supported by any cogent evidence. Further, the appellant had no prior criminal antecedents and only had connections with Humaidur Rehman because he bought dates from him and was distantly related to

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him. There was no overt act attributable to the appellant and he has been roped in merely because he supplied his father's Maruti Alto Car to his relative Humaidur Rehman and received a bag for safe keeping from Humaidur Rehman for a period of seven days. There was no evidence to indicate that the bag was handed over to the appellant on 05th September, 2021, nor that the appellant had any knowledge of the contents of the bag or whether the bag was opened in the presence of the appellant. The appellant was not even in sole possession of the bag since the house in which he stays is of his joint family comprising of at least eight other members. No incriminating phone conversations cropped up in surveillance, no recoveries were effected from the appellant. The car in question was found inside the residence of the appellant and no attempt was made to conceal its whereabouts. Further, no incriminating material was found on the examination of the car and there is no material on record to indicate that the appellant is a radicalized member of any terrorist organization.

8. The learned counsel for the appellant essentially stressed on the fact that there was no probative value of the evidence presented against the appellant. He relied upon the decision of the Hon'ble Supreme Court in ***Vernon v. State of Maharashtra***, 2023 SCC OnLine SC 885 where the Hon'ble Supreme Court relies upon their prior decision in ***National Investigation Agency v. Zahoor Ahmad Shah Watali***, (2019) 5 SCC 1 and opined that:

> *"37. …it would not satisfy the prima facie "test" unless there is at least surface-analysis of probative value of the*

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> *evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the Court of its worth."*
>
> (emphasis supplied)

9. He has further placed reliance on a decision of the Coordinate Bench of this Court in ***Wuthikorn Naruenartwanch v. National Investigation Agency***, 2017 SCC OnLine Del 10056 wherein, while dealing with an appeal under the NIA Act for grant of regular bail by the appellant therein, who was a resident of Bangkok, it has been held on facts of the case as under:

> *"25. In the present case, we have carefully examined the chargesheet filed by the NIA before the Special Court. The role of the appellant herein, described as an arms dealer and businessman, is limited to the extent of acting as a middleman and approaching the Chinese company TCL and Intermarine Shipping Company. He has merely acted as a middleman and corresponded via proper modes and not in a surreptitious manner. The only allegation against the appellant is that he was a privy to the conspiracy hatched between the other accused [being members of NSCN (IM)]. There is nothing in the chargesheet to suggest that the appellant knew that the arms and the ammunitions being procured were to be used in terrorist activities. Accordingly, we are unable to find that the allegations against the appellant are prima facie true. Hence, the order of the Trial Court cannot be sustained."*
>
> (emphasis supplied)

10. Various other decisions were annexed as part of the compilation submitted by the learned counsel for the appellant. However, during

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arguments, the above two decisions were substantially pressed, the decision of the Hon'ble Supreme Court in ***Vernon*** (*supra*) primarily for asserting that the principle of ***Watali*** (*supra*) had been provided context by the Hon'ble Supreme Court to include "*at least a surface analysis of probative value of the evidence*" at the stage of examination for grant of bail; and the decision of this Court in ***Wuthikorn Naruenartwanch*** (*supra*) to canvass that the role of the appellant was merely of a middleman and he had no knowledge about the fact that arms and explosives were given to him for safe keeping.

Applicable principles

11. In order to appreciate the submissions made by the learned counsel for the appellant, with regard to the ambit and expanse of the exercise to be undertaken by this Court in an appeal under Section 21(4) of the NIA Act, against the dismissal of the bail petition by the Special Court, it would be apposite to focus on: *firstly*, the principles laid down in ***Watali*** (*supra*); and *secondly* the further supplementation by the Hon'ble Supreme Court in ***Vernon*** (*supra*).

12. Prior to delving into the same, Section 43D (5) of the UAPA is extracted as under, for convenience of reference:

> *"(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:*

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> *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"*
>
> (emphasis supplied)

13. This provision prohibits release of a person accused of an offence punishable under Chapters IV & VI of the UAPA subject to the satisfaction of two conditions. *Firstly*, the public prosecutor has been provided an opportunity of being heard on the application for release; and *secondly*, the Court, on perusal of the case diary or the charge-sheet, is of the opinion that there are reasonable grounds for believing that the accusation against such person is *prima facie* true. Aside from the first condition, which is satisfied in this case, an issue arises on the breadth and depth of the exercise to be undertaken by the Court as regards the second condition.

14. It is clear that the Court can examine the charge-sheet, if it has been filed, and on the basis of that form an opinion whether there are reasonable grounds that the "*accusation*" against the appellant is "*prima facie true*". The guiding light for this is provided by the Hon'ble Supreme Court in ***Watali*** (*supra*). The following extract from para 23 of the said decision by the Hon'ble Supreme Court is instructive:

> *"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. Nevertheless, we may take guidance from the exposition in Ranjitsing Brahmajeetsing Sharma [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC

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> *(Cri) 1057] , wherein a three-Judge Bench of this Court was called upon to consider the scope of power of the Court to grant bail...."*
>
> (emphasis supplied)

15. Taking the benefit of exposition in ***Ranjitsing*** *(supra)*, the Hon'ble Supreme Court further opines in para 24 of ***Watali*** (*supra*) as under:

> *" 24. 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 the 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."*

Further, pursuant to an assessment of the evidence gathered by the investigating agency, the Apex Court states:

> *"27. For that, 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. In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible. For, the issue of admissibility of the document/evidence would be a matter for trial. The Court must look at the contents of the document and take such document into account as it is."*
>
> (emphasis supplied)

16. These principles have been further supplemented by the decision in ***Vernon*** (*supra*), where the Hon'ble Supreme Court opines as under:

> *"37. In the case of Zahoor Ahmad Shah Watali (supra), it has been held that 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 chargesheet must prevail, unless overcome or disproved by other evidence, and on the face of it, materials must show complicity of such accused in the commission of the stated offences. What this ratio contemplates is that on the face of it, the accusation against the accused ought to prevail. In our opinion, however, it would not satisfy the prima facie "test" unless there is at least surface-analysis of probative value of the evidence, at the stage of examining the question of granting bail and the quality or probative value satisfies the Court of its worth. In the case of the appellants, contents of the letters through which the appellants are sought to be implicated are in the nature of hearsay evidence, recovered from co-accused. Moreover, no covert or overt terrorist act has been attributed to the appellants in these letters, or any other material forming part of records of these two appeals. Reference to the activities of the accused are in the nature of ideological propagation and allegations of recruitment. No evidence of any of the persons who are alleged to have been recruited or have joined this "struggle" inspired by the appellants has been brought before us. Thus, we are unable to accept NIA's contention that the appellants have committed the offence relating to support given to a terrorist organisation."*
>
> (emphasis supplied)

17. For the sake of clarity, the following tenets can be usefully culled out from the above two decisions of the Hon'ble Supreme Court with respect to the extent of exercise to be undertaken by this Court in order to reach a conclusion under Section 43D (5) UAPA:

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i) Elaborate examination or dissection of evidence is not required to be done at this stage;

ii) The Court is merely expected to record findings on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offences;

iii) The totality of the material gathered by the investigating agency presented along with the charge-sheet and the case diary is to be assessed;

iv) Individual pieces of evidence or circumstance are not necessary to be analyzed;

v) Documents which form part of the evidence may not be discarded at this stage on the ground of them being inadmissible, since that would be a matter of trial;

vi) The Court must look at the contents of the documents and take into account such documents, as it is;

vii) A surface analysis of probative value of the evidence may be undertaken.

18. Except for the last point, which is the supplementation by the Hon'ble Supreme Court in ***Vernon*** (*supra*), the other principles are enunciated in ***Watali*** (*supra*). It would therefore be pertinent to examine the circumstances under which this supplementation was provided by the Hon'ble Supreme Court in ***Vernon*** (*supra)*.

19. The decision in ***Vernon*** (*supra)* was delivered in an appeal against the dismissal of bail to an accused in a case registered under UAPA in

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relation to an organization called the Elgar Parishad and a program held at Shaniwar Vada, Pune on 31st December, 2017. The FIR alleged that various events in connection with the said programme were provocative in nature and had the effect of creating enmity between caste groups leading to violence and loss of life. Subsequently, there were incidents of violence and arson near Bhima - Koregaon corridor. The accused in the said matter were not in the original FIR but pursuant to an expansion of the investigation, various accused were roped in. Since the charges against the appellants included commission of offences within Chapters IV & VI of the UAPA, the conditions of Section 43D (5) UAPA applied. The accused in the said case were arrested on 28th August, 2018. After an assessment of the statements and documents on record, the Hon'ble Supreme Court relying upon the principles in ***Watali*** (*supra*), stated, on the basis of analysis of evidence, that it was evident that contents of the letters for which the appellants therein were implicated were in the nature of hearsay evidence, recovered from co-accused, and no covert or overt terrorist act was attributed to the appellants. Further, it was noted that the activities of the accused were in the nature of propagation of an ideology. On this assessment the appeal was allowed and the appellants were released on bail.

Analysis

20. In deference to the principles enunciated by the Hon'ble Supreme Court, this Court has had an occasion to peruse the charge-sheet in detail along with the documents relied upon by the investigating agency.

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Unlike the facts in ***Vernon*** (*supra)*, the allegation on the appellant in this case is about participating in a conspiracy to engineer IED bomb blasts in India as a part of terror activities. Even a *surface analysis* of the evidence presented by the State would reveal that the accused was primarily charged for conspiracy alongwith other co-accused for possession of IEDs and other arms and ammunition including grenades and pistols for the alleged terror activities. While the initial investigation was triggered having received inputs from sources that a terrorist module was trying to execute serial IED blasts in India, pursuant to extensive investigation carried out in multiple States, on the basis of the said information, conspiracy was unearthed which involved a number of people allegedly planning to execute series of terrorist attacks including in Delhi, on behalf of certain organizations. As per the State, various leads led to the knowledge of a bag containing IEDs, hand-grenades and weapons which had been transferred from one co-accused to the other and finally to Humaidur Rehman who in turn handed over the same to the appellant and the said bag was kept at his residence, till it was handed back to Humaidur Rehman.

21. As per the State, the statement of witness Mohammad Tahir recorded under Section 164 Cr.P.C. corroborated the factum of the consignment containing arms and explosives being kept in a bag at the appellant's house which in the presence of the witness, on 12th September, 2021 was given back to co-accused Humaidur Rehman when he visited the appellant alongwith his wife, children and Zeeshan, who then took the consignment to Prayagraj. The witness had been told

about the bag containing arms and explosives and was asked in turn to place them at his second wife's (Khatija) house. The reliance of the investigating agency on the statement under section 164 Cr.P.C. is critical in the assessment of the probative value of the evidence, *albeit* a surface analysis. The statement recorded before a Magistrate, which will be subject matter of trial finally in relation to its probative value, would still, on a surface analysis, be reasonably relied upon for the purpose of this appeal.

22. Further, CDR analysis of the mobile number of accused persons was analyzed and it was corroborated that Humaidur Rehman had called the appellant on 05th September, 2021 and they were in continuous touch.

23. The third factum which emerged during the investigation was that the car used by Humaidur Rehman for taking delivery of the bag belonged to the appellant's father (Maruti Alto Car No.UP32BU2959). Even though these aspects are yet to be proved by the State, it would be difficult to reach a conclusion that the accusations against the appellant are not *prima facie* true.

24. This was not a situation like that in ***Vernon*** (*supra)* where there were allegations of inflammatory material allegedly circulated, reflecting a certain ideology. It is evident in the instant case put forward by the investigating agency, that there was a large scale conspiracy involving various persons acting for terror modules to engineer bomb blasts in India. The appellant was an integral part of the recovery of arms and

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explosives. This, *prima facie*, cannot be said to exculpate the accused/appellant at this stage for the purpose of bail.

25. In a decision rendered by a Division Bench of this Court (of which one of us was a member) viz. ***Ghulam Mohd. Bhat v. National Investigating Agency***, 2019 SCC OnLine Del 9431, while dealing with an appeal under the NIA Act, regarding an issue of bail, it was held as under:

> *"**7.** In view of the foregoing observations, the determination to be made by this court at this stage is within a very narrow compass. What the court is required to examine is the issue, whether there are reasonable grounds for believing that the accusations made against the appellant are "prima facie true".*
>
> *(*emphasis supplied*)*

The said decision was challenged before the Hon'ble Supreme Court by the appellant therein and the Special Leave Petition was dismissed by the Hon'ble Supreme Court, thereby giving finality to the decision of this Court.

26. The principles enunciated in ***Watali*** (*supra*) and ***Vernon*** (*supra*) do not invite a Court to go through a detailed analysis and merely a broad/surface assessment needs to be done. This is evidently a subjective assessment based on the records before the Court since, undeniably, the real probative value of the evidence will be a subject

matter of trial. Moreover at this stage when the charges are yet to be framed, and considering the nature of the offence that the appellant has been accused of, which involved being in the knowledge and the possession of arms, ammunition and serious explosives, with motive to trigger a terrorist activity, it would be difficult to reach a conclusion that the accused would be entitled to be released on regular bail, at this stage, (having completed about 2 years of incarceration). Notably, in ***Vernon*** (*supra*), the accused had been in custody for about 5 years and the Hon'ble Supreme Court also took into account the period of incarceration and delay in trial, and the principles enunciated in ***Union of India v. K.A. Najeeb*** (2021) 3 SCC 713.

27. There is a reasonable possibility that the appellant was one of the links in the network of people who were cognizant of the plan to trigger terrorist activity by using such bombs and explosives and causing loss of life. The fact that he was the weakest link or a substantial link is an issue which would be proven through trial by the prosecution. At the stage when the accused would be required for the purposes of framing of charges, this Court is of the opinion that he should not be released on bail.

28. The contention of counsel for the appellant that he was merely a middleman and reliance upon the decision in ***Wuthikorn Naruenartwanch*** (*supra*) cannot be accepted without qualification. It is not *prima facie* evident at this stage that the appellant was merely a intermediary without the knowledge of either the contents of the bag that

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he was meant to secure at his residence, or of the intent of the various co-accused who have entrusted him with the bag and were in touch with him. It would be quite natural to assume that somebody who has been entrusted with a bag to be kept at his residence would inquire and confirm the contents of the said bag. This is unlike ***Wuthikorn Naruenartwanch*** (*supra*) where the appellant was merely involved in a transaction between two companies.

29. It may also be worthwhile to note, in the context of allegations against the appellant being of conspiracy, that the Hon'ble Supreme Court has observed that it is difficult to get direct evidence of elements of conspiracy. Reference may be made to the decision of Hon'ble Supreme Court in ***Ram Narayan Popli v. CBI,*** (2003) 3 SCC 641; ***Firozuddin Basheeruddin v. State of Kerala,*** (2001) 7 SCC 596**.**

30. This Court in ***Anoop Singh v. State,***2017 SCC OnLine Del 8333 (decision rendered by one of us) has usefully culled out principles relating to conspiracy and the following extracts are instructive and useful:

> *"105. From a conspectus of the above decisions, the legal position that emerges, is collated as follows:*
>
> ... … … … …
>
> *vii. Since a conspiracy is hatched in private or in secrecy, it is rarely possible to establish a conspiracy by direct evidence. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances,*

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especially declarations, acts and conduct of the conspirators.

viii. Usually, both the existence of the conspiracy and its objects, have to be inferred from the circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn.

… … … … …

xiv. Conspirators may, be enrolled in a chain; or there may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. It may however be that both the theories overlap in a given case. But then there has to be present a mutual interest.

… … … … …

xvi. Persons may be members of a single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

… … … … …

xxi. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions."

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These principles further buttress the *prima facie* opinion of this Court articulated above.

31. Therefore, having considered the charge-sheet, the totality of the material based on broad probability regarding the involvement of the accused, the documents put forward by the investigating agency, as they were, and in addition pursuant to a surface analysis of probative value, this Court is of the opinion that there are reasonable grounds for believing that the accusation against the appellant is *prima facie* true. Consequently, the conditions in Section 43D (5) UAPA stand satisfied. The appeal is accordingly dismissed.

32. Judgment/Order be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

SEPTEMBER 18, 2023/mk