2023INSC755

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2505 OF 2023
(Arising out of SLP (Crl) No. 5764 of 2023

Pradeep Rameshwar Sharma .... Appellant(s)

Versus

National Investigating Agency & Anr. .... Respondent(s)

J U D G M E N T

A.S. Bopanna, J.

1. Leave granted.

2. The appellant is Accused No.10 in connection with NIA RC 01/2021/NIA/MUM (NIA Special Case No.1090/2021) registered for the alleged offences punishable under

Sections 120B, 201, 302, 364 and 403 of the Indian Penal Code ('IPC' for short), Section 25 of the Arms Act and Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 2004 ('UAPA' for short). In respect of the said proceedings the appellant who was arrested on 17.06.2021 had filed an application under Section 439 of CrPC before the learned Special Court Greater Mumbai for grant of bail. The learned Judge through the order dated 16.02.2022 had rejected the prayer for bail.

3. The appellant was before the High Court of Judicature at Bombay in Criminal Appeal No.258 of 2022 assailing the said order dated 16.02.2022 passed by the Special Court. The High Court having adverted to the details of the contentions has dismissed the appeal holding that it is not a fit case to enlarge the appellant on bail. It is in that circumstance the appellant is before this Court in this appeal.

4. Heard Shri Mukul Rohtagi and Shri Siddharth Dave learned senior counsel for the appellant, Shri S.V. Raju learned Additional Solicitor General for the respondents and perused the appeal papers.

5. The specific facts need not be brought out in detail and overburden this order in as much the High Court has referred to the allegations, more particularly with regard to the case of the prosecution sought to be made out against the appellant herein. Further during the course of the arguments, the learned senior counsel for the appellant as also the learned Additional Solicitor General has referred to the relevant portions of the order as also the material available on record. However, the details relevant for the limited purpose of consideration of the bail application is alone noticed.

6. The case of the prosecution put forth is that the appellant who is a retired police officer, in connivance with Sachin Waze another senior police officer had planted

gelatin sticks in a Scorpio Vehicle near the residence of a prominent businessman. In that regard, apart from referring to the role of Sachin Waze who is alleged to have also conspired with Mansukh Hiren to park this Scorpio Vehicle, the allegation is also that the appellant had a role with Sachin Waze in the murder of Mansukh Hiren. It is in that background, the charge as alleged is made against the appellant herein.

7. In the backdrop of the allegation, the High Court while taking note of the circumstance alleged to connect the appellant pertaining the offence wherein the gelatin sticks were laid in the Scorpio vehicle has *prima facie* arrived at the conclusion that it is a feeble attempt made to connect the appellant with Sachin Waze in that regard, only when the court questioned the NIA as to with whom Sachin Waze had conspired in planting of gelatin sticks in the Scorpio vehicle. With the further observation in that regard, High Court has noted that the charge sheet does not *prima facie* disclose that the appellant was involved in the conspiracy of

planting gelatin sticks in the Scorpio vehicle. Hence it was observed that after filing a detailed investigation report wherein the provisions of the Explosive Substances Act and Arms Act were not applied by the NIA against the appellant, it was only during the course of the arguments the prosecution was trying to link the appellant with the Scorpio vehicle-laden with gelatin sticks. The said observations made by the High Court would in fact indicate that in the present facts, as against the role assigned to the appellant, invoking of the UAPA would pale into insignificance and the rigor of that law would not be applicable at this stage while considering the application of the appellant for bail.

8. The further allegation against the appellant is with regard to his role in the murder of Mansukh Hiren. The circumstance as alleged against the appellant has been taken note of by the High Court in great detail as brought in paragraphs 7.14, 7.16, 7.19 and 7.22 of the order impugned. In that regard, much has been said about the

role of Santosh Shelar (Accused No.6) and the appellant herein being in contact with each other and also with Sachin Waze. The role of Sachin Waze of bringing a bag containing money in his car to the P.S. Foundation Compound at Andheri on 03.03.2021 and handing it over to the appellant is also referred. In that regard it is alleged that P.S. Foundation admittedly being run by the appellant was the place wherein the bag containing money was given to the appellant for executing the murder of Mansukh Hiren. The sequence of events to connect such activities involving the appellant, Sachin Waze, and Santosh Shelar is referred to in great detail.

9. In so far as the handing over of money it has been explained on behalf of the appellant that the Ex-Home Minister of Maharashtra had called Sachin Waze in the last week of February 2021 and had given him an ultimatum to collect an amount of Rs.100 Crores from various sources and hand over the money within one week which was expiring on 03.03.3021, failing which the threat of action

against Sachin Waze had been held out. It is in that background explained, that the meeting between the appellant and Sachin Waze who were colleagues earlier had taken place. In this regard, the High Court has rightly indicated that the defence of such nature cannot be looked into at this stage and are matters of trial. Similarly, we have noted the circumstances alleged against the appellant to contend that he was complicit to the crime of murdering Mansukh Hiren. They are also matters of evidence which is to be established during the trial by connecting the chain of circumstances to prove the guilt of the appellant beyond reasonable doubt. However, for the present having noted that the charge under UAPA would pale into insignificance and even if the remaining charge based on circumstantial evidence is kept in view, in so far as the role assigned to the appellant, the other circumstances which are relevant for grant of bail would be appropriate to be taken note of.

10. In that regard, as already referred to, the appellant was arrested as far back as 17.06.2021 and has been in

custody throughout, except for the brief period when this Court had released him on interim bail so as to attend to the medical treatment of his wife. In so far as the appellant is concerned, he has been interrogated and a charge sheet has been filed. Since all witnesses out of more than 300 witnesses named are to be examined and, in that regard, further investigation under Section 173(8) is pending, and a supplementary charge sheet would be filed, the process will not conclude in the near future. In so far as the role alleged against the appellant, as already noted by the High Court the charge sheet does not disclose that the appellant was involved in the conspiracy of planting gelatin sticks in the Scorpio vehicle. As per the charge, the appellant is stated to have conspired with Sachin Waze and others to eliminate Mansukh Hiren which is a matter of circumstantial evidence to be proved by the prosecution.

11. Though the High Court has arrived at the conclusion that the appellant being a retired police officer, there is the likelihood of interference in the course of trial, in our

opinion the fact that he was a police officer and has retired after rendering 37 years of service is a factor which should weigh in favour of the appellant as he has strong root in Mumbai and would be available to stand trial. The case is being prosecuted by a different agency-the NIA. That apart, there is no adverse report about the conduct of the appellant while he was out on interim bail. Further, he would also be aware that violating any of the conditions of bail would be detrimental to his own interest. In addition, it has also been urged before us that he has his mother aged about 93 years to care for, his wife who is also not enjoying good health has to undergo a reversal of bariatric surgery. This in fact was an aspect which was taken note of by this Court for the grant of interim medical bail and the operation advised could not be performed during the short period he was out on interim bail.

12. Therefore, if all the above aspects are kept in view, we are of the opinion that in the present facts, taking note of the role assigned to the appellant as also the

circumstances stated to connect the appellant to the crime and also the fact that the charge sheet has already been filed, there would be no purpose in continuing the appellant in custody. We are therefore of the opinion, that the appellant is to be released on bail subject to appropriate conditions being imposed by the trial court and the appellant diligently adhering to the said conditions and participating in the process of trial.

13. In that view, the order dated 16.02.2022 passed by the Special Court (NIA) Greater Mumbai and the order dated 23.01.2023 passed by the High Court in Criminal Appeal No.258/2022 are set aside. It is directed that the appellant be released on bail. For the purpose of imposition of conditions and issue of a release order, the appellant shall be produced forthwith before the trial court.

14. The appeal is accordingly allowed.

15. Pending application, if any, shall stand disposed of.

.....J.
(A.S. BOPANNA)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi,
August 23, 2023

ITEM NO.1501 COURT NO.4 SECTION II-A
(For judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) NO.5764 OF 2023

(Arising out of impugned final judgment and order dated 23.01.2023 in Crl.A. No. 258/2022 passed by the High Court of Judicature at Bombay.)

PRADEEP RAMESHWAR SHARMA **Appellant(s)**

VERSUS

NATIONAL INVESTIGATING AGENCY & ANR. **Respondent(s)**

[HEARD BY : HON'BLE A.S. BOPANNA AND HON'BLE PAMIDIGHANTAM SRI NARASIMHA, JJ.]

Date : 23-08-2023 This appeal was called on for pronouncement of judgment today.

For Appellant(s) **Mr. Mukul Rohatgi, Sr. Adv.**
Mr. Siddhartha Dave, Sr. Adv.
Mr. Subhash Jadhav, Adv.
Mr. Nikhil Rohatgi, Adv.
Mr. Kumar Vaibhaw, Adv.
Mr. Dilip Rawat, Adv.
Mr. Chandan Singh Shekhawat, Adv.
Mr. Anmol Kheta, Adv.
Mr. Mohd. Ashaab, Adv.
Ms. Devina Sehgal, AOR

For Respondent(s) **Mr. K M Nataraj, A.S.G.**
Mr. Suryaprakash V Raju, A.S.G.
Mr. Annam Venkatesh, Adv.
Mr. Kanu Agarwal, Adv.
Mr. Rajat Nair, Adv.
Mr. Rajan Kumar Chourasia, Adv.
Ms. Chitrangda Rastaravara, Adv.

Mr. Siddharth Dharamadhikari, Adv.
Mr. Srikant Sonkawade, Adv.
Mr. Arvind Kumar Sharma, AOR

Mr. Aaditya Aniruddha Pande, AOR
Mr. Siddharth Dharmadhikari, Adv.
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.
Mr. Aditya Krishna, Adv.

Hon'ble Mr. Justice A.S. Bopanna has pronounced the non-reportable judgment comprising His Lordship and Hon'ble Mr. Justice Pamidighantam Sri Narasimha.

Leave granted.

The order dated 16.02.2022 passed by the Special Court (NIA) Greater Mumbai and the order dated 23.01.2023 passed by the High Court in Criminal Appeal No.258/2022 are set aside. It is directed that the appellant be released on bail. For the purpose of imposition of conditions and issue of a release order, the appellant shall be produced forthwith before the trial court.

The appeal is allowed in terms of signed non-reportable judgment.

(RAJNI MUKHI)
COURT MASTER (SH)

(DIPTI KHURANA)
ASSISTANT REGISTRAR

(Signed non-reportable judgment is placed on the file)