



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

% ***Reserved on: February 08, 2024***

Pronounced on: April 22, 2024

+ CRL.A. 552/2022

SALIM MALIK @ MUNNA

..... Appellant

Through: Mr. Salman Khurshid, Senior Advocate with Mr. Bilal A. Khan, Ms. Anshu Kapoor & Ms. Sidra Khan, Advocates

Versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Amit Prasad, Special Public Prosecutor with Mr. Ayodhya Prasad, Ms. Anuradha Mishra, Ms. Ninaz Baldawala, Advocates with Mr. Anil Kumar, from Special Cell

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal has been preferred by the appellant under Section 21(4) of the National Investigating Agency Act, 2008 (in short "NIA") against the impugned order dated 06.10.2022, whereby he has been denied bail in FIR No.59/2020. Said FIR was initially registered under Sections



120-B/147/148/149 of the Indian Penal Code, 1980 ('IPC'), however, subsequently, Sections 124A/153A/109/114/212/353/395/427/ 307/302/186/452/34 IPC and Sections 3/4 of Prevention of Damage to Public Property Act, 1984 ('PDPP') and Sections 13/16/17/18 of Unlawful Activities (Prevention) Act (in short "UAPA"), were also added.

2. The appellant has averred that he was, initially, arrested in FIR No.60/2020 registered at Police Station Dayalpur, Delhi under PDPP Act. The said FIR was registered on 25.02.2020 at the instance of Constable Sunil, posted at Police Station Dayalpuri, Delhi, who on 24.02.2020 along with other members of the police team was deployed at Chand Bagh, Delhi, which was attacked by mob during the riots. In the alleged incident, Head Constable Ratan Lal lost his life and DCP, Shahdara and ACP, Gokulpuri sustained grievous injuries.

3. During the course of investigation, witnesses were examined; their statements under Section 161 Cr.P.C. were recorded; crime spot was inspected by the crime team; CCTV footages were retrieved from the cameras installed by GNCTD and private persons; other exhibits were collected and sent to FSL for expert opinion. Upon analysis of the CCTV footages, the persons involved in the riots were identified and arrested.

4. According to the appellant, his name was first mentioned by Head Constable Sunil and Constable Gyan in their supplementary statements recorded on 27.02.2020 in FIR No. 60/2020. On 11.03.2020, the accused appellant was arrested in FIR No. 60/2020 registered at Police Station Dayalpur. However, thereafter the accused was also arrested on 25.06.2020 in FIR No.59/2020, registered at Police Station Crime Branch, Delhi from Mandoli Jail, for larger conspiracy under Sections 147/148/149/120-B IPC.



5. The charge-sheet in the present FIR case *i.e.* FIR No. 59/2020 was filed before the learned Trial Court on 16.09.2020. Thereafter, the appellant was also arrested in FIR No.136/2020, registered at Police Station Dayalpur, from Mandoli Jail. According to the appellant, he has been granted bail in FIR No.136/2020 alongwith the other co-accused.

6. The appellant moved his first regular bail application on 13.11.2021 before the learned Special Court, Delhi. On 14.03.2022, co-accused in the present FIR was granted bail by the learned Special Court. However, the learned Special Court, *vide* impugned order dated 06.10.2022, dismissed the appellant's bail application, which has been assailed in the present appeal.

7. The prosecution case against the appellant-Salim Malik @ Munna is premised upon the statement of Head Constable Sunil, who in his statement recorded under Section 161 Cr.P.C. on 01.09.2020, stated that he was deployed as a Beat Constable at Chand Bagh area at Dayalpur Police Station, where protests against Citizenship (Amendment) Act, 2019 ('CAA') were going-on and the appellant, alongwith others, had put up tent and banner and used to give provocative hate speeches to the crowd that used to gather in the protest. The appellant, alongwith other associates, used to instigate the people for joining protest against the Central Government and in the name of religion. These people used to manage the stage and introduced the speaker, distribute *langar* and provoked the Muslim community against the government. The organizers of the protest D.S Bindra, Salman Siddiqui, Saleem Khan, and the appellant Saleem Malik @ Munna used to get money from Tahir Hussain to run the protest. On 23.02.2020, the appellant, alongwith the other protestors, had blocked the road that was the place of violence at Jafrabad.



8. On 24.02.2020, DCP Sh. Amit Kumar Sharma alongwith ACP Sh. Anuj Kumar went to speak to the appellant *i.e.* Saleem Malik @ Munna to have a talk in respect of provocative speech so that tension could be brought down. However, the women and men present at the protest site pushed them back and they could not talk to him. Subsequently, in the violence, which ensued, the concerned DCP, ACP and Head Constable Ratan Lal suffered grievous injuries.

9. The appellant was one of the protestors, who had provoked the people present there to indulge in violence and consequently, there was pelting of stones and attack on the police personnel with sticks, rods etc. and the government and non-government property was extensively damaged.

10. The appellant, in his bail application filed before the learned Trial Court, pleaded that he was not an accused or co-conspirator and had been falsely implicated in the present case; he was not a member of any whatsapp group in the present case; the role attributed to him did not fall under the 'terrorist act'; there had been a delay of more than 10 days in registration of the present FIR; the disclosure statement had no evidentiary value; no recovery of weapon had been made at the instance of the appellant; no independent witness had been linked to justify his role in the alleged offence; he had been in judicial custody since 25.06.2020 and charge-sheet in the present case has been filed.

11. The learned Special Public Prosecutor appearing on behalf of the respondent-State opposed his bail application contending that the appellant alongwith the other co-accused had hatched a conspiracy, which resulted into riots in Chand Bagh and Dayalpur area. The State also opposed grant of bail application, contending that as per the statement of various witnesses



recorded under Sections 161 and 164 Cr.P.C., a clear-cut and deep-seated conspiracy stands reflected against the appellant-accused and that individual role of a conspirator is not to be seen and rather a holistic view is to be taken. The appellant had participated in the meetings held on 16/17.02.2020 with other co-accused namely Suleman Siddiqui, Athar, Mohd. Saleem Khan and Shabad and bar of Section 43(D)(5) of UAPA applies to the present case.

12. The learned Trial Court, in light of the submissions made by both the sides, the material placed on record and the various judgments relied upon by the parties, dismissed the bail application of the appellant holding that on the basis of the charge-sheet and other documents, a *prima-facie* case against the appellant is made out and in view of embargo of Section 43(D)(5) of UAPA and Section 437 Cr.P.C., the appellant was not entitled to bail.

13. Learned senior counsel appearing on behalf of the appellant prayed for setting aside of the impugned order. It is averred that appellant is entitled to bail as the learned Trial Court has failed to consider the following crucial aspects:-

- i. On 24.02.2020, the appellant was not present at the spot of the incident.
- ii. In FIR No. 60/2020 registered at Police Station Dayalpur, which was registered pursuant to violence on 24.02.2020, he has already been granted bail. The timing of incident registered in FIR No.60/2020 is 1300 hrs to 1600 hrs and so his presence does not stand established.
- iii. The call detail record (CDR) in FIR No. 60/2020 also shows that his location near his house on 24.02.2020.



- iv. That the protest was started by one D.S. Bindra at Chand Bagh, who has not been arrayed as an accused.
- v. The appellant is a good cook and had merely been given the responsibility to oversee the kitchen at the back stage and was not involved in instigating the protestors which could attract the penal provisions.
- vi. The appellant lives in Chand Bagh and he is not a part of any whatsapp group linked to the protest. He was not a communicator or a messenger at any point of time.
- vii. He had no prior acquaintances with any student union or any organisation based in JNU, Jamia, Pinjra Tod on any protest, except for Chand Bagh.
- viii. The statements of the protected witnesses are absolutely exculpatory in nature and do not indict the appellant.
- ix. The other accused in the present FIR case being Safoora, Faizan, Ishrat Jahan, Asif Iqbal Tanha, Devangana, Kalita and Natasha Narwal. have already been granted bail.
- x. No offence under UAPA is made out.

14. Refuting the above, learned Special Public Prosecutor appearing on behalf of the respondent-State has opposed the present appeal on the ground that the appellant, who is a resident of Chand Bagh, actively participated in the riots and was part of unlawful assembly which culminated into riots, killings and injuries to public at large and several police officials on duty.

15. Learned Special Public Prosecutor submitted that in the statements of various witnesses recorded under Section 161 Cr.P.C. and 164 Cr.P.C., name of the appellant has cropped-up as a conspirator in the happening of



the alleged incident and that the learned Trial Court based upon the material placed on record has rightly struck down the appellant's bail application, which calls for no interference by this Court.

16. As per prosecution case on 16/17.02.2020, a midnight secret meeting had taken place wherein the appellant had also allegedly planned to create *chakka jam* during visit of U.S.A President Donald Trump in order to escalate the protest against CAA. Several whatsapp groups i.e. DPSG, JCC, MSJ, Pinjra Tod etc. were already into operation and one member was the member of other group as well. One of the members of DPSG group namely Owais Sultan Khan was repeatedly messaging about the violence planning and discussion held at Chand Bagh in a secret meeting on 16/17.02.2020. However, the said group remained, unusually, silent between 18.02.2020 to 21.02.2020. Thereafter, a meeting took place on 20/21.02.2020 at Chand Bagh and again on 22/23.02.2020 which was attended by the appellant alongwith other accused, wherein the aspect of violence and burning of Delhi were openly discussed. There were talks of finances, arranging arms, petrol bombs to be procured for killing of people and arsoning of property and destruction of CCTV.

17. The specific role attributed to the appellant is that he was one of the organizers of Chand Bagh protest wherein inflammatory speeches were given. The allegation is that counsellor Tahir Hussain had given money for running the protest (*dharna*). The aforesaid fact is substantiated from the statement of Head Constable Sunil recorded under Section 161 Cr.P.C. and statement of protected witness 'Venus' recorded under Section 164 Cr.P.C. Another protected witness 'Gold' in his statement under Section 161 Cr.P.C. also named the appellant, who alongwith others used to deliver speech



against the Central Government and against Hindus. According to him, the appellant had called upon the conspirators on 24.02.2020 alongwith stones, *danda* and rods on 24.02.2020 which led to riots and substantial damage to various properties. Also, another witness 'Silver' in his statement under Section 161 Cr.P.C. stated that the secret meeting was organized on 23.02.2020 wherein the appellant, alongwith the other accused persons, provoked the people to turn up in large number with swords, arms, petrol bombs, acid and deadly weapons when President Donald Trump was on tour to India.

18. The complainant Constable Sunil, in his statement under Section 161 Cr.P.C., stated that he was the Beat officer of the area of Chand Bagh where protests were taking place. He identified the organizers of the continuing protest as D.S. Bindra, Salman Siddiqi (New Mustafabad), Saleem Malik @ Munna, Mohd. Saleem Khan, and Dr. Rizwan. He further asserted that DS. Bindra used to host langar due to which significant number of women, children, youngsters' peoples from Muslim Community attended the protest. Salman Siddiqi, Saleem @ Munna, Saleem Khan, DS. Bindra and their allies used to set up the tents and banners in the vicinity before delivering divisive hate speeches to the assembled crowd. Further, the stage and speakers were looked after by the Athar, Shadab, Najam, Ayyub, Upasna, Tabassum, ravish, Nazma, Ishrat, Rubi. DS. Bindra used to instigate the crowd that Muslim Community will suffer the same fate as the Sikh Community suffered during the 1984 riots. On 23.02.2020 Bheem Army in support of Bharat Bandh staged a protest from Chand Bagh to Rajghat which mostly consisted of peoples from Muslim and Dalit Community. However, the police intervened and broke the protest as a result, roads were



blocked by the Saman Siddiqi, Saleem Khan, Saleem Malik @ Munna, Dr. Rizwan etc. alongwith other protesters. On the same day, extremely contentious speeches, slogans such as “*there has come a time to do something*”, “*lekar rahenge azadi*”, “*nare takbir AllahoAkbar*” and act of violence was reported at Jaffrabad. Also, on 24.02.2020, Salman Siddiqi, Dr. Rizwan, Salim @ Munna, Saleem Khan, Athar, Shadab, Najam, Mohd. Ayyub alongwith Upasana, Tabassum, Ravish, Nazma, Ishrat, Rubi etc were present at the protest site and a large police presence was in place for security purpose. Saleem @ Munna, at that point of time gave the divisive speeches and remarks and escalated the situation.

19. The protected witness ‘Gold’ in his statement under Section 161 Cr.P.C stated that at the protest site, Salman Siddiqui, Salim Malik, Salim Khan, Dr. Rizwan, Ayub, Athar, Shadab were among those who delivered divisive speeches by asserting that ‘central government is the government for Hindus’ and, therefore, unless and until some persons are not killed, they will not rescind the legislation. These individuals used to monitor the arrangements for meals as well. Moreover, on 23.02.2020, when they attempted to call for Bharat Bandh, the appellant along with other accused persons, namely, Salim Khan, Salman Siddiqui, Dr. Rizwan, Ayyub, Athar, Shadab declared that they would continue to protest and whoever comes between will be smashed down.

20. Another protected witness – ‘Pluto’ claimed in his statement under Section 164 Cr.P.C on 17.08.2020 stated that he used to own a biryani shop and Athar, Shadab, Salim Munna, Salim Khan and Rizwan Siddiqui had placed an order for biryani 3-4 days back amounting to Rs. 10,000/- , which he had to deliver to Ayaz’s Office located in Chand Bagh basement. At



around when 8:30 PM, when 'Pluto' went to deliver the order and requested payment, they informed him that Ayaz bhai would make the make the payment, and in the meantime they started eating. There, he overheard Athar stating that it is time to burn Delhi down and that money will not be short; weapons and petrol were also arranged; their objective was to kill at least 100-200. All other people concurred and said, "we are with you". Rizwan went on to say that they had enough money and shooters from U.P. were called.

21. In addition to above, another protected witness namely 'Johny' in his statement under Section 164 Cr.P.C stated that on 15.01.2020 at Old Bus Stand Seelampur a protest was taking place, when he met Gulfisha for the first time and then he came into contact of Devangana, Natasha, Proma, Subhashini, Tasleem, Suhail and Adnam, all of whom are members of Pinjra Tod Whatsapp group. He further stated that during the last days of January month he got to know that these people had begun gathering sticks, stone and red chillies and they intended to get together on 16/17.02.2020. Said day, these people gathered between 1-2 AM and in the end, Athar Khan talked about Chakka Jam at the protest venue in North-East, Delhi. The meeting was ended with a suggestion that in addition to sticks and stones, they should also carry acids.

22. Another witness 'Sodium' in his statement recorded on 22.02.2020 as well as on 15.06.2021 under Section 164 Cr.P.C., stated that he was invited to a meeting which took place in Gali No. 10, Chand Bagh, Ayaz's Building by three individuals namely Shadab, Athar and Saleem Khan. Attendees of said meeting acknowledged Athar's statement that they would block Chand



Bagh Road like the Jaffrabad Metro Station where riots took place and as a result the government would be compelled to rescind the legislation.

23. Another witness 'Radium' in his statement recorded under Section 164 Cr.P.C. on 23.02.2020 stated that Athar, Suleiman Siddique, Shadab and Ayyub were well known faces. At around 7 PM in the evening, one Mansoor instructed Radium to accompany him at the residence of Mukhtyar at Gali No. 3, Chand Bagh where 10-20 people were already present. In the said meeting, it was discussed that since the area has CCTV camera, riots cannot be carried out on the intended scale and, therefore, Saleem Khan and appellant- Saleem @ Munna would be in-charge to ensure that these are either destroyed or covered so that these are in position to capture anything.

24. Learned counsel appearing on behalf of the appellant relied upon a decision of Coordinate Bench of this Court in *Asif Iqbal Tanha Vs. State of NCT of Delhi* 2021 SCC OnLine Del 3253 wherein the appellant was arrested in the present FIR, under the NIA Act and after rejection of his bail by the Court of Sessions, he was granted bail by this Court observing that the subject FIR arose from a protest allegedly organised and arranged *inter alia* by the appellant and constitutional protection has been offered to the "right to protest", which right has been repeatedly and unequivocally been held to be part of the fundamental rights guaranteed under our Constitution. The Coordinate Bench, on a *prima facie* appreciation of the charge-sheet held that restrictions for grant of bail under Section 43-D(5) UAPA did not apply and granted bail to the appellant.

25. Respondent, whereas, contend that the abovesaid order in *Asif Iqbal Tanha (Supra)* was challenged by them by filing SLP (CrI.) No. 4287/2021 (II-C), and vide order dated 18.06.2021, the Supreme Court categorically



observed that the impugned judgment whereby *Asif Iqbal Tanha* and other accused, namely, Devangana Kalita, Natasha Narwal, were granted bail shall be not treated as a precedent and may not be relied upon by any of the parties in any of the proceedings.

26. The respondent-prosecution has placed strong reliance upon a very recent decision of Hon'ble Supreme Court in ***Gurwinder Singh Vs. State of Punjab and Another*** 2024 SCC OnLine SC 109, wherein rejection of bail of accused under Sections 124A/153A/153B and 120B IPC as well as Sections 17/18/19 of UAPA read with Sections 25 and 54 of the Arms Act, by the High Court, was upheld in view of the material available on record which, inter alia, indicated his involvement with banned Terrorist Organisation.

27. Relevantly, to consider the case of the appellant for bail, it is required to be seen whether the role attributed to him in the present FIR case brings him within the ambit of the expression '*prima-facie true*'.

28. The Hon'ble Supreme Court in the case of ***National Investigating Agency Vs. Zahoor Ahmad Shah Watali*** reported as 2019 (5) SCC 1 has elaboratively dealt with sub-Section 5 of Section 43(D) of 1967 Act and observed as under:-

“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.”

29. The riots, which took place in the capital city of Delhi in the year 2020, were result of deep-rooted conspiracy, wherein the appellant was a co-conspirator. The preparators and conspirators of such riots had learnt a lesson from the riots which had earlier taken place in December, 2019 which were having similar characteristics and modus operandi, albeit on a lower scale. The objective of the conspirators was to escalate protests to *chakka jam* and once crowd in large number was mobilized, lead and incite them against the police and others. In order to give a secular look, secular names/Hindu names were given to protest sites to give secular color. The conspiracy involved from moving from protest site to designated locations and to block the main road and highways and thereby, create confrontal situations, communal violence, attacking police and paramilitary forces, damage public and private property by using petrol bombs, fire arms, deadly weapons, acid bombs, stones, chilli powder etc. Finances were also arranged and were utilized in organizing such violence. According to prosecution, the entire chain of events, clearly reflects conspiracy and from the testimony of witnesses recorded under Section 161 Cr.P.C. and Section 164 Cr.P.C. as well as from electronic evidence, i.e. chats of whatsapp groups, it was clear that appellant was a co-conspirator.

30. The learned Special Public Prosecutor, during the course of hearing, had taken this Court to the contents of Supplementary Charge Sheet to show the manner in which the rioter, within ten minutes of dislocating/disconnecting the last CCTV camera installed in the areas of



Chand Bagh and New Mustafabad area, committed atrocities, which resulted in death of Head Constable Rattan Lal and caused grievous injuries to various police personnel, including DCP Shahdara, Delhi. The footage collected by the prosecution goes on to indicate the premeditated conspiracy for mobilization of rioters to not only cause the riots but also to attack police personnel.

31. Even though appellant may not be a part of the whatsapp group but is quite obvious from the statement of various witnesses that he had attended the meetings and took active part in relation to hatching conspiracy of committing riots. At this initial stage of the case when the court has yet to ascertain charges and then to embark on trial, the statements of witnesses examined by the prosecution during the investigation, have to be taken at their face value.

32. In addition, the protected witness 'Radium' in his statement recorded under Section 164 Cr.P.C. stated that on 23.02.2020 at around 07:00 PM in the evening, one Mansoor instructed him to accompany at the residence of Muktyar at Gali No. 3, Chand Bagh where 10-20 people were already present. In the said meeting, it was discussed that since the area CCTV cameras were installed, the riots could not be carried out at the intended scale and, therefore, Saleem Khan and Saleem @ Munna, appellant herein, were Incharge to either destroy the CCTV or to cover those, which they did.

33. This Court finds that complainant Constable Sunil in the first supplementary charge-sheet and the other prosecution witnesses in their statements, have named the appellant-accused, who had allegedly hatched a conspiracy of destroying the CCTV cameras installed in the Chand Bagh area, and he had not only delivered provocative speeches, aiming at



destroying the religious harmony which were against the unity and sovereignty of the country. Also, he was instrumental in providing financial assistance to facilitate commission of riots.

34. In view of the afore-noted factual matrix of the case and statements of the witnesses recorded during investigation, we find that the accusation made against the appellant make out a '*prima facie true*' case against him. Consequently, embargo created under Section 43-D(5) of UAPA, automatically gets attracted. Moreover, at the stage of consideration of bail in UAPA, the Court is not required to do extensive or comprehensive evaluation of the evidence and is required to form opinion on the basis of broad probabilities. The evaluation is essentially based on surface-analysis of the probative value of the material so collected. The Court is, thus, required to assess whether there are reasonable grounds to believe that the accusation made against any such accused are '*prima facie true*' or not.

35. Moreover, the Hon'ble Supreme Court in ***Bimal Gurung Vs. Union of India*** (2018) 15 SCC 480 wherein the petitioner, the President of *Gorkha Janmukti Morcha*, had sought transfer of investigation to an independent Agency, while refusing to grant relief held that the offences alleged in FIRs registered against him included offences under Sections 121, 121-A, 153-A and offences under Unlawful Activities (Prevention) Act, 1967 as well as offences under Sections 307, 302 IPC, etc. and transfer of investigation of such large number of cases en masse was neither practicable nor justified. While holding so, the Hon'ble Supreme Court observed as under:-

“31. Article 19 of the Constitution of India guarantees some of the most important fundamental rights to the citizens. Article 19



protects important attributes of personal liberty. Right to freedom of speech and expression as guaranteed under Article 19(1)(a) and the right to assemble peaceably and without arms as protected by Article 19(1)(b) are the rights which in reference to the present case have importance. The right of freedom of speech and expression coupled with right to assemble peaceably and without arms are rights, expression of which are reflected in carrying demonstration on several occasions. Freedom to air one's view is the lifeline of any democratic institution. The words "freedom of speech" must be broadly construed to include right to circulate one's view by word or mouth or through audio-visual instrument. Right of public speech is one form of expression which is also a part of freedom of speech and expression. Demonstrations are also a mode of expression of the rights guaranteed under Article 19(1)(a). Demonstrations whether political, religious or social, or other demonstrations which create public disturbances or operate as nuisances, or create or manifestly threaten some tangible public or private mischief, are not covered by protection under Article 19(1). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. From the very nature of things a demonstration may take various forms; "it may be noisy and disorderly", for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). We in the present case are concerned with the demonstrations and the bandh call given by GJM.

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36. *This Court, however, noticed that more often than not, such protestors take to hooliganism, vandalism and even destroy public/private property. The following observations have been made in para 16: (Anita Thakur case [Anita Thakur Vs. State of J&K, (2016) 15 SCC 525)*

“16. Before adverting to the issue at hand, we would like to make some general remarks about the manner in which these demonstrations are taking shape. Recent happenings show an unfortunate trend where such demonstrations and protests are on increase. There are all kinds of protests: on social issues, on political issues and on demands of various sections of the society of varied kinds. It is also becoming a common ground that religious, ethnic, regional language, caste and class divisions are frequently exploited to foment violence whenever mass demonstrations or dharnas, etc. take place. It is unfortunate that more often than not, such protestors take to hooliganism, vandalism and even destroy public/private property. In the process, when police tries to control, the protestors/mob violently target policemen as well. Unruly groups and violent demonstrations are so common that people have come to see them as an appendage of Indian democracy.”

36. It was observed by the Apex Court that Articles 19(1)(a) and (b) give constitutional right to all citizens freedom of speech and expression which



includes carrying out public demonstration also but public demonstration when becomes violent and damages the public and private properties and harm lives of people it goes beyond fundamental rights guaranteed under Article 19(1) and becomes an offence punishable under law. Thus, though the citizen of this country has a right to protest but it has to be in a peaceful manner and without resorting to violence. However, in the meetings dated 20/21.02.2020 at Chand Bagh and again on 22/23.02.2020, which were attended by the appellant along with other accused, the aspects related to riot-like violence and burning of Delhi, were openly discussed which is not acceptable in any democratic Nation. There were also talks of finances, arranging arms, procuring of petrol bombs for killing of people and arsoning of property and destruction of CCTV installed in the area.

37. The Hon'ble Supreme Court in ***Gurwinder Singh (Supra)*** on the aspect of grant of bail in cases involving penal provisions under UAPA, observed as under:-

“27. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail. It lays down that if the Court, ‘on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure’, is of the opinion that there are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter



IV and/or Chapter VI of the UAP Act is prima facie true, such accused person shall not be released on bail or on his own bond. It is interesting to note that there is no analogous provision traceable in any other statute to the one found in Section 43D(5) of the UAP Act. In that sense, the language of bail limitation adopted therein remains unique to the UAP Act.

28. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released' - suggests the intention of the Legislature to make bail, the exception and jail, the rule.

29. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme



Court in Zahoor Ali Watali² has noticed this difference, where it said:

“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.”

30. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a ‘rule’, if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are prima facie true. It is only if the test for rejection of bail is not satisfied - that the Courts would proceed to decide the bail application in accordance with the ‘tripod test’ (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.”

38. The Hon’ble Supreme Court in ***Gurwinder Singh (Supra)*** has also observed that the charges against the accused therein revealed different members were recruited for multiple roles and mere fact that accused has not received any funds or that nothing incriminating was recovered from



him, would not absolve him of his role in the crime. In the present case, there is enough material on record which clearly indicates that the appellant herein was a co-conspirator and has committed the offence for which he has been charge-sheeted.

39. Therefore, in view of bar provided under Section 45 D (5) of UAPA, we do not find any merit in the present appeal and the same is accordingly dismissed, while making it clear that any observation made hereinabove shall not be construed as an expression on the merits of the case and the learned Trial Court, while deciding the charges, shall not be influenced, either way, by any observation made herein above.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

APRIL 22, 2024

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