

(2025) 08 CAL CK 0633
In the Calcutta High Court, Appellate Side
Case No : CRA 302 of 2025

Md. Saddam @ Mohammad Saddam @ Saddam Mallick @
Abdul Mallick

APPELLANT

Vs

Union of India & Anr

RESPONDENT

Date of Decision : 13-08-2025

Acts Referred:

Unlawful Activities (Prevention) Act, 1967 — Section 2(k), 15, 18, 46

Citation : (2025) 08 CAL CK 0633

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Jakir Hossain, Mazahar Hossain Chowdhury, Chandrima Debnath,
Sahin Sultana, Arun Kumar Maiti, Bhaskar Prosad Banerjee, D. Tandon

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. Since the trial court fixed August 14, 2025 as the date for framing of charges, we deem it appropriate to admit the appeal and consider and dispose of the appeal on merits today.
2. We are informed all papers used before the jurisdictional Court are available before us, for us to decide the appeal on merits. Nonetheless, the appellant submits an informal paper book which be taken on record.
3. Appeal is directed against an Order No.79 dated July 8, 2025 passed in NIA Case No.01 of 2023.
4. Appeal is at the behest of one of the accused in a criminal case.
5. Although, the department reports that, the memorandum of appeal is not in form since the copy of the impugned order does not contain the recording that it is a true copy, we find that, the impugned order bears the stamp and seal of the learned Court which passed the impugned order. We also find that copy bears the

Court fees payable for obtaining the certified copy.

6. True, the noting that it is the certified to be true is not recorded on the body of such order, by virtue of the impugned order containing the Court fees payable for a certified copy and the stamp and seal of the office of the jurisdictional Court, we treat the copy of the impugned order to be the certified copy, in the facts and circumstances of the present case.

7. None of the appearing parties disputes the contents of the impugned order dated July 8, 2025 or that the certified copy is not made available on record.

8. Learned Advocate appearing appellant submits that, the appellant filed an application for discharge before the jurisdictional Court. He submits that, initially, a general diary was recorded on January 6, 2023 and the appellant was intercepted along with another person from a particular place. At such interception, seizure list was prepared and few articles were seized. Largely the articles seized were electronic in nature, namely, laptop, dongle and other materials. House of the appellant was also raided subsequent to the interception of the appellant. Raid at the house continued from the late evening of January 6, 2023 till into the early morning on January 7, 2023. Again, various electronic items were seized.

9. Referring to the provisions of Section 46 of the Unlawful Activities (Prevention) Act, 1967, learned Advocate appearing for the appellant submits that, the provisions therein are not satisfied by the prosecution. He draws the attention of the Court to the fact that, the electronic materials sought to be relied upon are to be dealt with in the manner under Section 46 of the Act of 1967, which the prosecution did not adhere to.

10. Learned Advocate appearing for the appellant submits that, initially, another person was arrested along with the appellant. Such other person was subsequently discharged by the prosecution. A third person was entangled into the case. He submits that, there is no connection between the appellant and the third person or even with the person who stood discharged. According to him, prosecution is yet to place on record any materials to suggest the involvement of the appellant in the police case.

11. Learned Advocate appearing for the appellant submits that, without a charge being proposed under Section 15 of the Act of 1967, charges proposed to be under Section 18 and onwards of the Act of 1967 cannot be done. Therefore, he submits that, since the appellant is not being charged under Section 15 of the Act of 1967 which actually defines terrorism, no charge under the Act of 1967 can be framed. Therefore, the appellant is entitled to an order of discharge.

12. We are considering the appeal directed against rejection of an application for discharge filed by the appellant.

13. Before the jurisdictional Court, few points were canvassed on behalf of the appellant for discharge. The points canvassed before the jurisdictional Court were

that, the appellant was innocent and falsely implicated, prosecution failed to recover any incriminating articles from the possession of the appellant, appellant is not involved in any unlawful activities, appellant is not connected with the alleged offence, appellant does not subscribe the ideology of ISIS and no cogent and convincing evidence was placed to frame any charge.

14. We remind ourselves of the position in law for considering an application for discharge from a criminal case. In considering an application of discharge, neither the jurisdictional Court nor the appellate Court is called upon to evaluate the evidence and to arrive at a finding that, no charges can be framed against the appellant. We also remind ourselves that it is imperative that, not only the prosecution but also the defence should be allowed reasonable opportunity at the trial to establish its case. What, a Court, while considering an application for discharge is required to consider is, whether or not the materials placed before the Court suggests requirement of a trial.

15. In the facts of the present case, certain incriminating materials were seized from the possession of the appellant which suggests that, the appellant is involved and subscribes to a particular ideology which is inimical to the sovereignty of India.

16. We do not find any ground to arrive at a conclusive finding at this stage that, the materials which the prosecution seeks to place at the trial, does not establish either a connection between the appellant and the materials seized or his involvement in the activities alleged as against the appellant.

17. Section 15 of the Act of 1967 defines what would constitute a terrorist act. Section 18 onwards of the Act of 1967 prescribes the punishment for a terrorist act. Section 2(k) of the Act of 1967 defines a terrorist act as the meaning assigned to it under Section 15. It prescribes that, expression "Terrorism" and "Terrorist" are to be construed accordingly. Section 18 onwards under which, the appellant is sought to be charged under, are the provisions of the Act of 1967 which prescribes the punishment for the offence under the Act of 1967.

18. Alleged non-adherence of Section 46 of the Act of 1967 is to be looked at and considered at the trial, if so raised. The same does not ipsi dixit result in a discharge of an accused.

19. In such circumstances, we find no merit in the present appeal.

20. CRA (DB) 302 of 2025 is dismissed without any order as to costs.

21. I agree.