

(2023) 12 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Criminal Appeal (D) No. 35 Of 2019, 5 Of 2020

National Investigation Agency

APPELLANT

Vs

Feroz Ahmed Lone

RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

National Investigation Agency Act, 2008 — Section 21
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B
Unlawful Activities (Prevention) Act, 1967 — Section 13, 18, 18B, 43D(5)
Code Of Criminal Procedure, 1973 — Section 164A, 173

Citation : (2023) 12 J&K CK 0020

Hon'ble Judges : Tashi Rabstan, J; Rajesh Sekhri, J

Bench : Division Bench

Advocate : Vishal Sharma, Abhinav Sharma, Parkhi Parihar

Final Decision : Dismissed

Judgement

Rajesh Sekhri, J

1. Both the appeals trace their genesis to the same FIR, thus being disposed of by way of this common judgment.

2. In CrI A(D) No. 35/2019 filed under Section 21 of the National Investigation Agency Act, 2008 (NIA Act, for short), challenge has been thrown to order dated 15.12.2018 propounded by learned Special Judge, NIA J&K (3rd Additional Sessions Judge), Jammu (trial Court, for short), vide which, interim bail has been granted in favour of respondent on the ground that there is prima facie no sufficient material against him for the commission of offences under Section 120-B RPC and 13, 18 and 18-B of Unlawful Activities (Prevention) Act, 1967 [UA(P) Act, for short]. The interim bail granted in favour of respondent was made absolute by the trial court vide order 11.11.2019 against which appellant has filed CrI A(D) No. 5/2020 before this Court.

3. Brief facts of the case are that on information that some terrorists have taken

shelter and hidden themselves, SI-Harwinder Singh No. 09274/ARP along with other police staff was deputed to cordon and search duty in Manigha area District Kupwara on 30.10.2017 and two persons namely Danish Ghulam Lone and Sohail Ahmed Bhat were apprehended. During preliminary investigation, it revealed that with the connivance of other accused persons, namely, Daulat Ali Mugal, Ishaq Palla, Liyakat Ali Khan etc., they were trying to cross the Line of Control (LOC) to enter Pakistan Occupied Kashmir (POK) for arms training with criminal intention to wage war against the State. Accordingly a case bearing FIR No. 279 of 2017 under Sections 120-B and 13, 18 and 18-B of UA(P) Act was registered by Kupwara Police against aforesaid person and were arrested in the case. The Central Government on receipt of information directed National Investigation Agency (NIA), appellant herein, to take up the investigation and case was re-registered in Police Station NIA New Delhi Vide Case No. RC-07/2018/NIA DLI dated 21.02.2018. During investigation, it came to fore that six accused persons, namely, Suhail Ahmed Bhat, Danish Gulam Lone, Liyakat Ali Khan, Daulat Ali Mughal, Ghulam Ali Mughal and Haroon Ahmed Sheikh were arrested by Kupwara Police in connection with aforesaid FIR. The examination of all the accused was conducted in which accused Suhail and Danish revealed that they had met accused Ishaq Palla in Central Jail Srinagar on 25.10.2017 and conspired to cross over the LOC to get the arms training in POK and to join militancy. The said accused also mentioned the name of another inmate Parvez Ahmed Lone (who was lodged in Central Prison, Srinagar) for meeting on the direction of Ishaq Palla through Blackberry Messenger (BBM). Accused Feroz Ahmed Lone, respondent herein, was deputed as Deputy Superintendent in Central Jail Srinagar on 25.10.2017 who was assigned the work to supervise meeting with visitors. It also surfaced that respondent knowingly and wrongfully facilitated Suhail and Danish to meet accused Ishaq Palla in the name of another inmate Parvez Ahmed Lone. Statements of witnesses under Section 164-A Cr.P.C. were recorded and accused Suhail and Danish were examined. Respondent came to be arrested on 28.08.2018. He was admitted to interim bail by the trial court on 15.12.2018, which was extended from time to time.

4. Appellant has questioned the impugned order dated 11.11.2019 vide which interim bail granted in favour of respondent on 15.12.2018 was made absolute inter alia on the grounds that impugned order is a complete negation of bar created under Section 43-D(5) of the UA (P) Act and it has been passed without waiting for the outcome of the appeal preferred by the appellant against interim bail dated 15.12.2018 granted in favour of the respondent. Appellant has also assailed the impugned orders on the ground that learned trial court instead of hearing the parties on framing of charge/discharge after presentation of the charge sheet has proceeded to make the interim bail absolute vide impugned order dated 11.11.2019.

5. Heard arguments and perused the file.

6. While Mr. Vishal Sharma, learned DSGI appearing for the appellant-Agency

has reiterated the grounds urged in the memo of appeal, ex adverso, Mr. Abhinav Sharma, learned Senior Advocate appearing on behalf of the respondent has argued that since respondent has been granted interim bail by learned trial Court on the basis of lack of sufficient material against him, therefore, learned trial Court has rightly made it absolute. Learned senior counsel for the respondent submits that no material has been placed on record requiring this court to interfere with the impugned orders.

7. Allegation against the respondent is that he facilitated the meeting between Ishaq Palla and other two terrorists in the jail premises and, therefore, he was part and parcel of the offences committed by rest of the accused persons. Learned trial court on appreciation of material adduced by the prosecution has observed that there is no material on record to conclude that there are reasonable grounds for believing that accusations made by the prosecution against respondent are prima facie true. It is pertinent to note that interim bail granted in favour of respondent was made absolute after presentation of the final report by the prosecution in terms of section 173 Cr.P.C. There is consensus between learned counsels appearing on the rival sides that respondent has been formally charged now and case is pending for prosecution evidence. Respondent at the relevant time was working as Deputy Superintendent of Jail and, therefore, learned trial court has rightly observed that there are least chances of his jumping over the bail or taking any undue advantage. Therefore, we do not think that any purpose will be served by cancelling the bail already granted in favour of the respondent and remand him to custody.

8. In view of the above, both the appeals are dismissed and impugned orders are upheld.