

(2023) 07 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Criminal Appeal No. 57, 69 Of 2022, Criminal Miscellaneous Case No. 1751 Of 2022

Riyaz Ahmed And Ors

APPELLANT

Vs

UT Of J&K

RESPONDENT

Date of Decision : 20-07-2023

Acts Referred:

National Investigation Agency Act, 2008 — Section 22
Unlawful Activities (Prevention) Act, 1967 — Section 3, 13, 13(2)
Arms Act, 1959 — Section 7, 25
Explosive Substances Act, 1908 — Section 4, 5
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 121, 121A

Citation : (2023) 07 J&K CK 0022

Hon'ble Judges : Rajnesh Oswal, J; Moksha Khajuria Kazmi, J

Bench : Division Bench

Advocate : Iqbal Hussain Bhat, Akeel Wani, Sanchit Verma, Monika Kohli

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. The appellants in both these appeals figure as accused in charge-sheet titled, 'State vs. Rameez Raja and others' arising out of FIR bearing No. 182/2022 of Police Station Kishtwar. Initially, the charge-sheet was laid against the appellants before the court of learned Chief Judicial Magistrate, Kishtwar on 26.12.2018 and was committed to the court of learned Sessions Judge, Kishtwar on same date itself. Thereafter, vide order dated 26.03.2019, the charge-sheet was transferred to the court of learned 3rd Additional Sessions Judge, Jammu (Special Court constituted under Section 22 of NIA Act) (hereinafter to be referred as 'the trial court'). The appellants were charged for commission of offences under sections 3/13 Unlawful Activities Prevention Act (UA(P) Act), 7/25 Arms Act, 4/5 Explosive Substances Act read with Section 120-B of RPC vide order dated 25.10.2019.

2. In Crl A (D) No. 69/2022, the appellants filed two separate bail applications

and both the applications were dismissed by the learned trial court vide its order dated 12.11.2022. Aggrieved of the order dated 12.11.2022, the appellants have challenged the same on the grounds that from perusal of the charge sheet, no offence under Section 120-B or 7/25 Arms Act or 3/13 UA(P) Act is made out and the co-accused from whom recovery was made, has already been granted bail by the learned trial court. It is further pleaded that the appellant No.1, 2 & 3 have been arrested on 09.12.2018, 16.12.2018 and 04.09.2018 and for the last four years, the prosecution has not been able to conclude the trial. It is also stated that there is no recovery of arms and ammunition or any incriminating document from any of the appellants.

3. Response stands filed by the respondent in CrI A(D) No. 69/2022, wherein factual aspects of the case have been narrated and it is stated that during the course of investigation, offences under Sections 120-B/121/121-A RPC, 4/5 Explosive Substances Act, 7/25 Arms Act and 3/13 UA(P) Act were proved against the accused, namely, Rameez Raja and Nisar Ahmed and offences under Sections 120-B RPC, 3/13 UA(P) Act were proved against all the appellants and the charge sheet was laid before the court on 26.12.2018. It is further stated there are serious allegations against the appellants and they do not deserve to be enlarged on bail.

4. In CrI A(D) No. 57/2022, the bail application filed by the appellant was dismissed by the learned trial court vide order dated 29.09.2022. Aggrieved of the rejection of bail, the appellant has challenged the same on identical grounds as urged in CrI A(D) No. 69/2022.

5. Mr. Iqbal Hussain Bhat, learned counsel for the appellants in CrI A(D) No. 69/2022 submitted that the learned Single Judge vide its order dated 16.06.2023 passed in CRM(M) No. 163/2023 has quashed the charges framed against the appellants for commission of offences punishable under section 7/25 Arms Act, 4/5 Explosive Substances Act and 120-B RPC and only charge under Section 3/13 UA(P) Act has been maintained. He further submitted that since the appellants have been ordered to be charged for commission of offence under section 3/13 UA(P) Act, so maximum punishment provided by Section 13(2) of the Unlawful Activities Prevention Act, 1967 is 05 years and the appellants have been in custody for the last more than four and half years.

6. Mr. Sanchit Verma, learned counsel for the appellant in CrI A(D) No. 57/2022 submitted that the appellant was arrested on 09.09.2018 and due to Covid lockdown, he was granted interim bail on 03.06.2020 and remained on bail till 10.08.2020 but due to restrictions imposed during the Covid-19 pandemic, the appellant could not appear before the learned trial court and it was only on 27.07.2021, when the appellant appeared before the learned trial court.

7. Ms. Monika Kohli, learned Sr. AAG has not denied the issuance of directions by the learned Single Judge in CRM(M) No. 163/2023, whereby the trial court has been directed to redraw the charge for commission of offence under Section 3/13

UA(P) Act. She further submits that the appellants are involved in serious offences and as such, should not be enlarged on bail.

8. Heard learned counsels for the parties and perused the record, including the record of the learned trial court.

9. A perusal of the charge sheet reveals that all the appellants in both the appeals figure as co-accused along with Rameez Raja and Nissar Ahmed. All the accused including the appellants were charged for commission of offences under Sections 3/13 UA(P) Act, 7/25 Arms Act, 4/5 Explosive Substances Act read with Section 120-B of RPC vide order dated 25.10.2019. The appellants challenged the order dated 25.10.2019 and also the order dated 26.08.2022, whereby the learned trial court had rejected their application seeking alteration of charge. Learned Single Judge vide order dated 16.06.2023 has set aside the order of framing of charge to the extent of commission of offences punishable under Sections 7/25 Arms Act, 4/5 Explosive Substances Act and 120-B RPC, however, the charge under section 3/13 UA(P) Act has been maintained.

10. It needs to be mentioned that the co-accused, namely, Nissar Ahmed was granted bail by the learned trial court vide order dated 31.03.2022, after the charge framed against the said Nissar Ahmed vide order dated 25.10.2019 was altered vide order dated 15.02.2022, where by the charge for commission of offence u/s 4/5 ES Act and 120-B RPC was deleted. In terms of the order dated 16.06.2023, the appellants have been ordered to be charged for commission of offence under Section 3/13 UA(P) Act only. The appellant No. 1 was arrested on 09.12.2018, the appellant No. 2 was arrested on 16.12.2018 and the appellant No. 3 was arrested on 04.09.2018. The appellant namely, Ayaz Ahmed was arrested on 09.09.2018 and he has remained in custody for 3 years and nine months approximately.

11. Section 13 of Unlawful Activities (Prevention) Act, 1967 is reproduced as under:-

13. Punishment for unlawful activities.- (1) Whoever-

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under Section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other

country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

12. The appellants have been ordered to be charged for commission of offence under Section 3/13 UA(P) Act only, for which the maximum punishment provided is imprisonment for five years or with fine or with both. The appellants have been in custody for the last more than 4 ½ years in CrI A(D) No. 69/2022 and the appellant in CrI A(D) No. 57/2022 has been in custody for nearly 3 years and 9 months, meaning thereby that the appellants have already remained in custody for the period, which is the substantial part of the maximum sentence, which can be awarded to them in case of their conviction. It is also found by us that no recovery has been affected from the appellants.

13. We have examined the orders passed by the learned trial court, though we do not find any infirmity in the same in view of facts and circumstances prevailing at that time but in view of the subsequent order passed by the learned Single Judge for alteration of the charge, the orders of the trial court are not sustainable. We could have directed the appellants to approach the trial court with fresh bail applications but taking into consideration that they have been in custody for the substantial part of maximum period of punishment provided under section 13 of UA(P) Act, we have shown indulgence. Accordingly, we allow the appeals and set aside both the orders impugned in the appeals i.e. 12.11.2022 and 29.09.2022 passed by the learned trial court and accordingly, direct the release of the appellants on the following terms and conditions:-

(a) That they shall furnish bail bonds for an amount of Rs. 50,000/- each to the satisfaction of the learned trial court and personal bonds of like amount.

(b) That the appellants shall not contact any of the prosecution witnesses either physically or through any other mode and shall not leave the territorial limits of the Union Territory of Jammu and Kashmir without the prior permission of the learned trial court.

(c) That the appellants shall regularly appear before the learned trial court on each and every date of hearing.

(d) That the appellants shall not indulge in any criminal activities.

14. Both the appeals are accordingly disposed of.