

ITEM NO.3

COURT NO.5

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s).14091/2023

(Arising out of impugned final judgment and order dated 16-08-2023 in DBCRA(Db) No. 64/2023 passed by the High Court Of Judicature For Rajasthan At Jaipur)

MAZHAR KHAN

Petitioner(s)

VERSUS

N.I.A. NEW DELHI

Respondent(s)

(IA No. 225125/2023 - EXEMPTION FROM FILING O.T.; IA No. 225128/2023 - PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 18-01-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Ms. Nitya Ramakrishnan, Sr. Adv.
Ms. Rashmi Nandakumar, AOR

For Respondent(s) Mr. K M Natraj, A.S.G.
Dr. Reeta Vasishta, Adv.
Mr. Anuj Srinivas Udupa, Adv.
Mr. Chitvan Singhal, Adv.
Mr. Kritagya Kumar Kait, Adv.
Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard Ms. Nitya Ramakrishnan, learned senior counsel appearing for the petitioner. The respondents are represented by Mr.K.M.Natraj, learned Additional Solicitor General of India.

2. The petitioner is an accused in the case arising out of FIR no. 150 of 2022 registered under Sections 4,5 and 6 of Explosive

Substances Act, 1908 and 13,15,16,18 and 20 of the Unlawful Activities (Prevention) Act, 1967. He was arrested on 07.04.2022 and rejection of his bail by the High Court on 16.08.2023 has led to the present Special Leave Petition.

3. The learned Senior Counsel for the petitioner would contend that considering the materials which have been gathered by the prosecution in the present matter, the restriction under the proviso to Section 43D(5) of the UAPA Act would not come in the way for consideration of the bail for the petitioner. The counsel refers to the materials on record to argue that statement of the co-accused is the primary basis to implicate the present petitioner and those being inadmissible in law, cannot justify further detention without the benefit of bail for the petitioner.

4. The learned Senior Counsel further submits that SUFA is not amongst the list of banned Terrorist Organisations under Schedule 1 of the UAPA Act and, therefore, being associated with such an organisation and with their members would not itself attract the connection of the accused with the crime alleged in the FIR No. 150/2022. In order to substantiate her argument, Ms. Ramakrishnan, refers to Sections 15,18 and Sections 2(L) and 2(M) of the UAPA Act,1967.

5. The counsel also relies on the ratio in 1999(5) SCC 253, *State Vs. Nalini and Ors.* to argue that the statements made to the police by the co-accused may be relevant qua the co-accused

but not for the person against whom allegation is made. The other argument is that no covert or overt Act of terrorism has been attributed to the petitioner, by the prosecution.

6. Opposing the bail, Mr. Natraj, the learned A.S.G. would firstly submit that the petitioner has criminal antecedent and that case also relates to the Unlawful Activities (Prevention) Act, 1967. Insofar as, the absence of any overt and covert Act in the allegation leveled against the petitioner, the learned ASG would refer to the chargesheet in the RC18/22/NIA/DLI to argue that the petitioner is closely connected with such people whose roles are covered under the provisions of UAPA Act. The counsel would then refer to Section 43D(5) to argue that unless the Court is able to reasonably believe that the acquisition against the petitioner are *prima-facie* untrue, the Court must order in favour of the prosecution. In other words, the burden would be on the accused to overcome the threshold limit prescribed under the Section 43D(5) of the proviso.

7. This Court had the occasion to examine the provisions of Section 43D(5) proviso inserted by Act 35 of 2008, in the case of *National Investigation Agency Vs. Zahoor Ahmad Shah Watali reported in 2019(5) SCC 1*. The ratio indicates that the Court must be satisfied that there are reasonable grounds for believing the accusation against the accused are *prima facie*, not true.

8. Proceeding with the above understanding of the law enunciated by this Court in *Watali (Supra)* and the discussion of the same ratio in the case of *Vernon Vs. The State of Maharashtra & Anr., Criminal Appeal No.639 of 2023 (judgment dated 28.07.2023)*, together with the materials in the shape of the chargesheet in the RC-18/2022/NIA/DLI made available before this Court and looking into the criminal antecedent of the accused in a case of similar nature, we are of the view that the bail is not merited in the present matter.

9. The Special Leave Petition is, accordingly, dismissed.

10. Pending application(s), if any, shall stand disposed of.

(VARSHA MENDIRATTA)
COURT MASTER (SH)

(KAMLESH RAWAT)
ASSISTANT REGISTRAR