

Firoz Khan vs State Of Jharkhand Through Ats on 22 November, 2022

Author: Rongon Mukhopadhyay

Bench: Rongon Mukhopadhyay, Ambuj Nath

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.1021 of 2022

Firoz Khan.	Appellant
	Versus	
State of Jharkhand through ATS.	Respondent

Coram: THE HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY THE HON'BLE MR. JUSTICE AMBUJ NATH

For the Appellant	: Mr. Kumar Harsh, Advocate
For the State	: Mrs. Priya Shrestha, Special P.P.

06/22.11.2022 Defects, as pointed out by the office, are ignored.

Heard the parties.

This appeal is directed against the order dated 25.05.2022, passed by the learned Additional Judicial Commissioner-XVIII cum Special Judge, ATS, Ranchi in ATS Case No. 01 of 2022, whereby and whereunder prayer for bail of the appellant has been rejected.

It has been alleged that a secret information was received that notorious criminal Aman Srivastava was receiving extortion money by threatening different industrialists and coal businessmen. It has further been alleged that Aman Srivastava with the aid of his brother Avik Srivastava (appellant), Manjari Srivastava, Chandra Prakash Ram, Sidhartha Sahu, Ashin Lakra, Prince Raj and other associates namely Vinod Pandey, Amjad Khan, Jahoor Ansari, Mahmood @ Nepali, Aslam were receiving extortion money through HAWALA. It has also been alleged that the accused persons makes conversation through Whatsapp., Telegram, Line App. etc.. On account of their terror, no cases are lodged before the police. After making a station diary entry, a raid was conducted by the police at various places and from the possession of Sanjay Karmakar, who is the bodyguard of Prince Raj, a revolver and six bullets were recovered, for which an arms licence issued from the State of Jammu & Kashmir was produced. On 16.01.2022, a cash amount of Rs. 28,88,000/- was seized from the residence of Sidhartha Sahu, who had confessed that the amount is extortion money, which

was to be sent to Aman Srivastava through HAWALA. On 16.01.2022 itself an amount of Rs. 5,42,000/- was seized from the residence of Binod Kumar Pandey, who is also an active member of Aman Srivastava gang.

It has been submitted by the learned counsel for the appellant that at best it can be a case of extortion and so far as Sections 20 and 21 of the UAP Act are concerned, the said provisions cannot be invoked independently but is dependent on Sections 15, 16 and 17 of the UAP Act. It has further been submitted that some of the co-accused persons have been granted bail by this Court in Cr. Appeal (D.B.). No. 667 of 2022 and in Cr. Appeal (D.B.). No. 756 of 2022. It has also been submitted that the appellant is in custody since 21.02.2022.

Learned Special P.P. has opposed the prayer for bail of the appellant and has submitted while referring to the counter affidavit that several witnesses have disclosed about the demand made by the appellant. She has further submitted that in the 164 Cr.P.C. statement of the witnesses, it has come to light that the appellant had used the SIMS of other persons who all have denied the same. Learned Special P.P. adds that the appellant has five criminal antecedents.

One of the co-accused namely Avik Srivastava has been granted bail by this Court in Cr. Appeal (D.B.). No.667 of 2022 and consideration was made to the judgement passed in the case of Pullin Das @ Panna Koch Vs. State of Assam, reported in (2008) 5 SCC 89 and Thwaha Fasal Vs. Union of India, reported in (2021) SCC Online SC 1000 while coming to the conclusion, which reads thus:-

"11. As we have noted above, a "Terrorist Act" has been defined in Section 15 of UAP Act and the penal provision for being involved in a Terrorist Act is Section 16 of UAP Act. Section 17 of UAP Act is also a corollary to Section 15 of the said Act as it encompasses punishment for raising funds for a Terrorist Act. The appellant, however, has not been chargesheeted under Sections 16 or 17 of the UAP Act. Similar is the situation when the offence charged is under section 21 of the Act. Therefore for laying down a foundation to attract Sections 20 and 21 of the UAP Act, Sections 15, 16 and 17 of the Act will have to act as a base for the same. Therefore, leaving aside Sections 20 and 21 of the UAP Act, the primary offence against the appellant is conspiracy, abetment and acting in furtherance of a common intention with respect to extortion. The appellant has been shown to be the Director of M/s A.S.N. Engicom, through which the extortion money was channelized. Mrs. Priya Shrestha has drawn the attention of the Court to the various amounts transferred to the account of M/s A.S.N. Engicom as well as other suspicious transactions. Such transaction/ transfer of money would at best attract an offence for extortion and not an offence under sections 20 and 21 of UAP Act."

As has been noted above, some of the co-accused persons have been granted bail by this Court. Learned court below has not properly appreciated the inadequacies of the prosecution in making out a case under sections 20/21 of the UAP Act and has based its finding regarding a prima facie case being made out against the appellant under sections 43(D)(5) of the UAP Act primarily on the allegation of demand of extortion made by the appellant.

On consideration of the aforesaid facts, we hereby set aside the order dated 25.05.2022, passed by the learned Additional Judicial Commissioner-XVIII cum Special Judge, ATS, Ranchi in ATS Case No. 01 of 2022 and direct that the appellant be released on bail, on furnishing bail bond of Rs.10,000/- (Ten thousand only) with two sureties of the like amount each to the satisfaction of learned A.J.C. XVIII cum Special Judge, ATS, Ranchi in connection with ATS Case No. 01 of 2022 with a condition that he shall remain physically present on each and every date before the learned trial court till the conclusion of the trial.

This appeal is allowed and disposed of.

(Rongon Mukhopadhyay, J) (Ambuj Nath,J) Rakesh/-