

Abdul Wahid Alias Saddam vs National Investigation Agency on 7 August, 2024

Author: Prathiba M. Singh

Bench: Prathiba M. Singh, Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 29th July

Pronounced on: 7th August

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CRL.A. 283/2024

ABDUL WAHID ALIAS SADDAM

.....

Through: Mr. Rahul Raheja and Mr.

Prakash, Advs. (M: 98112

versus

NATIONAL INVESTIGATION AGENCY

.....Respondent

Through: Mr. Gautam Narayan, SPP with Ms.

Asmita Singh, Mr. K. V. Vibu Pra

& Mr. Anirudh Anand, Advs.

(8447960358)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

JUDGMENT

PRATHIBA M. SINGH, J.

1. This hearing has been held through hybrid mode. Background facts

2. The present appeal under Section 21(4) of the National Investigation Agency Act, 2008 (hereinafter, 'NIA Act') has been filed by the Appellant- Abdul Wahid Alias Saddam, assailing the order dated 28th February, 2024 passed by the Id. Additional Sessions Judge-03, Patiala House Court, New Delhi (hereinafter, 'Trial Court') in 'National Investigation Agency v. Mohd.Shahjan & Ors.' arising out of RC No.05/2022/NIA/DLI dated 8th February, 2022 registered under Sections 120B, 489B & 489C IPC and Sections 16 & 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter, UAPA). Vide the impugned order, the Id. Trial Court has rejected the application seeking grant of bail filed by the Appellant.

3. In brief, the facts arising out of the present proceedings are that one Mohammad Shahjan (i.e., Accused No. 1 or 'A-1' before the Trial Court) was apprehended on 12th January, 2022 upon his arrival at Terminal-3, IGI Airport, New Delhi from Ras-al-Khaimah, UAE. He was searched by the Custom officials and Fake Indian Currency Notes (hereinafter, 'FICNs') of Rs.500/- denomination, totalling 2000 in number, were recovered from him, amounting to Rs.10 lakhs. Additionally, gold weighing 175 grams was also recovered from Mohammad Shahjan.

4. The allegation was that the said Mohammad Shahjan was to handover the FICNs to Amir-ul-Haq (i.e., Accused No. 2 or 'A-2' before the Trial Court) at Delhi Airport, who was also intercepted and arrested. On 15th January, 2022, the sum of Rs.10 lakhs, which was seized, was sent to the Currency Note Press, Nasik for examination, and in its report dated 31st January, 2022, the said report declared the recovered FICNs as high-quality counterfeit Indian currency.

5. The Ministry of Home Affairs, vide order no. 11011/10/2022/NIA dated 8th February, 2022, handed over the investigation with respect to the above allegations against A1 and A2 to the Respondent-NIA, which registered an FIR bearing No. RC-05/2022/NIA/DLI dated 8th February, 2022, against four individuals namely:

□ Mohammad Shahjan ('A1'), □ Amir-Ul-Haq ('A2'), □ Mohammad Muzammil (who is stated to be residing in Dubai) and, □ Abdul Qadir @ Sheikh Sahab.

6. Sections 16 & 18 of the UAPA were then invoked on 23rd February, 2022 and Mohammad Shahjan was arrested on 1st March, 2022. The allegation was that he was closely related to Amir-Ul-Haq, who was stated to be the kingpin and known as 'Sheikh Sahab'. According to the chargesheet dated 24th June, 2022, he was involved in making payments of visas and air tickets etc., between November, 2021 and January, 2022.

7. The case made out against the Appellant (i.e., Accused No. 3 or 'A-3' before the Trial Court) was that he was facilitating the two other accused i.e., Mohammad Shahjan and Amir-Ul-Haq in smuggling FICNs and other counterfeit articles from Dubai to India. The Appellant was arrested for his role on 4th March, 2022. According to the chargesheet, prior to the consignment which was seized, at least 10 to 15 consignments were alleged to have been sent at the behest of Abdul Qadir from Dubai through a human carrier for whom the Appellant had arranged visas and air tickets. Proceedings leading to the present appeal

8. In the present case, the chargesheet was filed by the NIA on 24th June, 2022 against all the accused persons i.e., Mohammad Shahjan, Amir-Ul-Haq, the Appellant and Amandeep Singh under Sections 489B, 489C and 120B IPC and Sections 16 & 18 of the UAPA.

9. Two supplementary chargesheets bearing No.15A and 15B of 2022 dated 22nd March, 2023 and 21st September, 2023 were also filed. Thereafter, on 31st May, 2023, charges were framed against the Appellant and Amir-Ul-Haq under Section 18 of the UAPA, with alternative charges for offences under Section 489C read with 120B IPC.

10. In the meantime, the Appellant filed a bail application before the Trial Court on 24th August, 2022 praying for regular bail. Reply to the bail application was filed by the NIA on 5th September, 2022. Impugned order

1. Vide order dated 28th February, 2024, the Trial Court rejected the bail of the Appellant on the ground that in such cases the bail must be rejected as a rule, after the Court has perused the final report or the case diary, and if there is a reasonable ground for believing that the accusation is prima

facie correct, then bail ought not to be granted.

2. The Trial Court also examined the Section 43-D(5) of the UAPA, and applied the two-pronged test as propounded in *Gurwinder Singh v. State of Punjab & Another* (2024 INSC 92) for rejecting grant of bail. The Trial Court then analyzed the investigation and the findings therefrom of the NIA. Salient points of the reasoning given by the Trial Court are as follows:

□Charges have been framed against the Appellant under Section 18 of the UAPA, and alternatively for the offence under Section 489C IPC read with Section 120-B of IPC. The Trial Court formed a prima facie view that there was a conspiracy between the Appellant and the accused A1.

□The material on record shows that, according to the statement of PW-12 Faiz Ahmed, the Appellant was in direct contact with Abdul Qadir, and the Appellant was looking after his work in Delhi.

□The statement of PW-12 further reveals that A2 used to come to the counter of the Appellant, and drop cloth bundles smuggled from Dubai to India.

□According to the Trial Court, to cross the bar under Section 43D(5) of the UAPA, the accused must establish that the case is prima facie not true. Following the judgment of the Supreme Court in *Vernon v. State of Maharashtra & Anr.* [(Crl. Appeal No. 640/2023) decided on 28th July, 2023], surface level probative value of the material on record is to be assessed. The judgment of *Gurwinder Singh* (Supra) specifically lays down the meaning of prima facie true, and the material on record must be assessed in this context.

□The material on record shows that money was paid by the Appellant through co-accused Amir-ul-Haq, indicating that the Appellant was part of the conspiracy involving smuggling consignments containing high-quality FICN, gold, and other counterfeit items.

□The circumstances and statements of witnesses must be seen in light of the actual recovery of high-quality FICN from the accused Mohd. Shahjan.

□There are also allegations against the Appellant that he maintained account details, and a notebook was also recovered. □The facts of the case and the material on record, including statements and documents, indicate that the evidence is not dismissible at the outset. Therefore, the Appellant could not cross the bar laid down under Section 43-D(5) of UAPA, and the bail application was dismissed.

Submissions of the parties

11. The case of the Appellant, as canvassed by Mr. Rahul Raheja, Id. Counsel, is that the bail application has been wrongly rejected by the Trial Court. The Appellant was not in any way involved in the smuggling of counterfeit currency. He is a businessman, who is engaged in the business of

export/import of burkhas and gold. According to Id. Counsel for the Appellant, there is no material whatsoever on record to link the Appellant to the counterfeit currency. The Appellant was not aware of any smuggling conducted by either Mohd. Shahjan or Amir-Ul-Haq.

12. The further submission is that co-accused Amandeep Singh (A-4) has already been discharged by the Trial Court. Amandeep Singh, who faced the same or similar charges, has been granted regular bail by the Id. Trial Court. Therefore, the present Appellant prays for the same consideration based on the Doctrine of Parity.

13. Id. Counsel appearing on behalf of the Appellant submits that the latter was not aware of the smuggling of counterfeit currency by heavily relying upon disclosure statement of the Appellant dated 6th March, 2022 under Section 27 of the Indian Evidence Act. The Court was taken through the said disclosure statement and it was pointed out that the appellant had stated therein that once in December, 2021, Abdul Kadir had called him and asked that he will send Indian currency, which he would have to hand over to some unknown persons. It was further recorded therein that in the first week of January, 2022, he sent FICN, but he was not aware about the said FICN and that Abdul Kadir had told him that this consignment was very important and he will inform to whom this consignment was to be delivered, once it reaches. Relying on the aforesaid portion of the disclosure statement, it is the submission of the Id. Counsel for the Appellant that it is the case of the Prosecution itself that the Appellant was not aware about the smuggling of FICN.

14. In addition, the disclosure statement of the Appellant dated 6th March, 2022 himself proves that he was engaged in dealing with counterfeit currency. Reliance is also placed upon the diary/notepad maintained by the Appellant, which mentions the specifics of the transactions, wherein the Appellant paid money to Amir-Ul-Haq on the directions of Abdul Qadir@ Sheikh Sahab to facilitate the smuggling of FICN from Dubai to India.

15. Per contra, Id. SPP Mr. Gautam Narayan appearing for the NIA submits the statements given by the PW-10 Mohd. Irshad, PW-11 Mansooruddin@ Mansoor and PW-12 Faiz Ahmad clearly nail the Appellant.

16. Id. SPP also argued that the impugned order is well-reasoned and based on a thorough examination of the investigation materials, with no errors or irregularities and does not warrant interference by this Court.

17. It is further submitted that voice notes recovered from Amir-Ul-Haq's mobile device and the Notepad of the Appellant, seized from Sh. Faiz Ahmad, demonstrates the Appellant's active role in the conspiracy. Reliance is also placed upon the report of the handwriting expert dated 11th August, 2022 marked as Ex. D-22/C. Transcripts of voice notes recovered from A-2's mobile device on 12th January, 2022 also corroborate the Appellant's involvement.

18. Lastly, it is argued that there is a strong apprehension that the Appellant might flee and impede justice if granted bail, especially given the trial's crucial stage and the need to examine key witnesses.

Analysis and Conclusions Legal position of bail under UAPA

19. In the present case, the Appellant is charged under Section 18 of the UAPA Act, which reads as under:

"18. Punishment for conspiracy, etc.--Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

20. A perusal of the above provision shows that even 'facilitating a terrorist act' would be an offence under UAPA. Though initially, the Appellant was charged under Section 16 of the UAPA, the final charge sheet against the Appellant was restricted to only Section 18 of the UAPA. Under Section 15 of the UAPA, actions that affect the economic security of the country, including the circulation of high-quality counterfeit Indian paper currency, constitute a terrorist act. Explanation (b) under Section 15 of the UAPA reads as follows:

"15. Terrorist act.--[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, [economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,--

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause--

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or (iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or ..

Explanation.--For the purpose of this sub-section,-- ...

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule."

21. The UAPA is a special Act, which has provisions that lay down standards to be adopted for grant of bail. Section 43-D(5) of the UAPA reads as under:

"(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true."

22. A perusal of the above provision shows that the threshold for granting bail under Section 43-D(5) of UAPA is quite high; the accused person shall not be released on bail if the Court is of the opinion that there are grounds to believe that the allegations against the accused are prima facie true. This provision has been recently considered by the Supreme Court in the following three decisions:

□National Investigation Agency v. Zahoor Ahmad Shah Watali, [2019] 5 SCR 1060 □
Gurwinder Singh v. State of Punjab & Anr. (2024 INSC 92) □Sheikh Javed Iqbal @
Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh, 2024 INSC 534

23. The decision in Gurwinder Singh (supra) has discussed the decision in Zahoor Ahmad Shah Watali (supra) in detail, and has, in fact, laid down the standards by which bail applications under Section 43-D(5) of UAPA are to be judged - as objectively as possible.

24. In Gurwinder Singh (supra), an appeal was filed against the order passed by the High Court of Punjab and Haryana, which upheld the Special Judge's decision denying regular bail to Gurwinder Singh and co-accused in an NIA case. Charges were framed against the accused under IPC, UAPA, and Arms Act, and arose out of an incident where two individuals were apprehended for hanging 'Khalistan' banners. The investigation revealed a terrorist module linked to the banned organization 'Sikhs for Justice', with the accused allegedly receiving funds through illegal means for separatist activities and attempts to procure weapons.

25. The Trial Court in Gurwinder Singh (supra) dismissed the bail application based on reasonable grounds to believe that the accusations against the Appellant were true. Subsequent investigation reports, including a 4th supplementary chargesheet, and disclosure statements from other co-accused further implicated the Appellant in the conspiracy. The High Court, considering the seriousness of the offences and considering that the protected witnesses were to be examined also

rejected the bail plea.

26. The Supreme Court, affirming the High Court's decision, also rejected the bail application due to several reasons. Firstly, despite the Appellant's counsel arguing that the Appellant's mobile phone had not been scrutinized, call detail records showed consistent communication between the Appellant and co-accused Bikramjit Singh (Accused No.3), and secondly, the Appellant's and co-accused's disclosure statements corroborated each other, indicating their trip to Srinagar to procure weapons for terrorist activities, even though the Appellant claimed ignorance of the purpose of the trip.

27. In Gurwinder Singh (supra), the Supreme Court has discussed the scope of Section 43-D (5) of UAPA, and observed that, unlike in conventional bail matters, where bail is a rule, and jail is an exception, under the UAPA, the intention is to make the 'bail an exception and jail a rule'. The Supreme Court provided clear guidelines as to the manner in which grant of bail under Section 43-D(5) of UAPA is to be considered. The relevant portion of the said decision is extracted below:

"18. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released'-suggests the intention of the Legislature to make bail, the exception and jail, the rule.

19. The courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in Zahoor Ali Watal has noticed this difference, where it said:

"In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."

20. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a 'rule', if after hearing the public prosecutor and after perusing the final report or Case Diary, the Court arrives at a conclusion that there are reasonable grounds for believing that the accusations are

prima facie true. It is only if the test for rejection of bail is not satisfied - that the Courts would proceed to decide the bail application in accordance with the 'tripod test' (flight risk, influencing witnesses, tampering with evidence). This position is made clear by Sub-section (6) of Section 43D, which lays down that the restrictions, on granting of bail specified in Sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any other law for the time being in force on grant of bail.

21. On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a twin-prong test:

1) Whether the test for rejection of the bail is satisfied?

1.1 Examine if, prima facie, the alleged 'accusations' make out an offence under Chapter IV or VI of the UAP Act 1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC;

2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant of bail under Section 439 CrPC ('tripod test')?

On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself:

2.1 Whether the accused is a flight risk?

2.2 Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?

22. The question of entering the 'second test' of the inquiry will not arise if the 'first test' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The accused will have to show that he successfully passes the 'tripod test'."

28. Paragraph 21 of the judgment as extracted above, prescribes the 'twin- prong' test, which was the basis applied by the Trial Court in the rejecting grant of bail in the present case. Under this test, the first consideration is whether the reasons for rejecting bail are sufficient, and whether the test for rejection was satisfied. Thereafter, as part of the second prong, the Court is required to apply the 'tripod test', which is the usual test for grant or non- grant of bail i.e., 'flight risk, influencing of witnesses and tampering of evidence'. The Court also analysed Zahoor Ahmad Shah Watali (supra) and crystallized eight propositions as laid down in Zahoor Ahmad Shah Watali (supra) as under:

"Test for Rejection of Bail: Guidelines as laid down by Supreme Court in Watali's Case

23. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that Courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 29 and 32, the following 8-point propositions emerge and they are summarised as follows:

□Meaning of 'Prima facie true' [para 23]: On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence. □Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges Compared [para 23]: Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case.

□Reasoning, necessary but no detailed evaluation of evidence [para 24]: The exercise to be undertaken by the Court at this stage--of giving reasons for grant or non-grant of bail-- is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage.

□Record a finding on broad probabilities, not based on proof beyond doubt [para 24]: "The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

□Duration of the limitation under Section 43D(5) [para 26]: The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof.

□Material on record must be analysed as a 'whole'; no piecemeal analysis [para 27]: The totality of the material gathered by the investigating agency and presented along with the report and including

the case diary, is required to be reckoned and not by analysing individual pieces of evidence or circumstance.

□Contents of documents to be presumed as true [para 27]: The Court must look at the contents of the document and take such document into account as it is.

□Admissibility of documents relied upon by Prosecution cannot be questioned [para 27].

The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.....In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."

29. Recently, in Sheikh Javed Iqbal (supra), the Supreme Court focused on the issue of speedy trial even in cases under the UAPA. This case also involved circulation of fake currency, and the accused had been in custody for more than five years. The Supreme Court emphasised that 'speedy trial' is part of the fundamental rights of any accused. If the trial continues indefinitely, bail ought to be granted, even in a case under the UAPA. The relevant extract from the judgment is set out below:

"21. It is true that the appellant is facing charges under Section 489B IPC and under Section 16 of the UAP Act which carries a maximum sentence of life imprisonment, if convicted. On the other hand, the maximum sentence under Section 489C IPC is 7 years. But as noticed above, the trial is proceeding at a snail's pace. As per the impugned order, only two witnesses have been examined. Thus, it is evident that the trial would not be concluded in the near future.

22. It is trite law that an accused is entitled to a speedy trial. This Court in a catena of judgments has held that an accused or an undertrial has a fundamental right to speedy trial which is traceable to Article 21 of the Constitution of India. If the alleged offence is a serious one, it is all the more necessary for the prosecution to ensure that the trial is concluded expeditiously. When a trial gets prolonged, it is not open to the prosecution to oppose bail of the accused-undertrial on the ground that the charges are very serious. Bail cannot be denied only on the ground that the charges are very serious though there is no end in sight for the trial to conclude. "

30. In Sheikh Javed Iqbal (supra), the Supreme Court granted bail and distinguished Gurwinder Singh (supra) on the ground that the trial was underway in the said case, and 22 witnesses had already been examined.

31. A similar factual situation arose for consideration before the Id. Division Bench of the Calcutta High Court in Surojit Mandal v. National Investigation Agency (MANU/WB/1106/2022). In the said decision, the prosecution alleged that the Appellant (i.e., Surojit Mandal) financed, aided, and abetted the circulation of high-quality counterfeit currency notes in conspiracy with three co-accused. High-quality counterfeit currency notes were seized from all the three accused on

different instances. The investigation revealed active telephonic communication between the Appellant and two accused from December 2019. Additionally, Rs. 1,38,000/- was transferred from the Appellant and his sister-in-law's accounts to one of the accused's bank accounts shortly before the counterfeit notes were recovered. The Calcutta High Court refused to interfere with the order of the Trial Court rejecting bail, and observed that role of the Appellant in the alleged offences was prima facie true. The relevant observations read as follows:

"5. Having considered the materials on record in the light of the rival submissions of the parties, we note that the investigating agency had apprehended A-1 and A-2 on 21st January, 2020 with high quality FICNs valued at Rs. 2,46,000/- and Rs. 1,00,000/- respectively. Subsequently, another consignment of high quality of FICNs valued at Rs. 5,00,000/- was recovered from A-

3. Further investigation in the matter including the analyses of digital data from the mobile phones and the sim cards of the appellant and the other accused persons revealed that the appellant was in active communication with A-1 and A-2 from December, 2019. Even on 20th January, 2020, a day prior to their apprehension, there were telephonic conversations between the appellant, A-1 and A-2. On 16th and 17th January, 2020 i.e. 4-5 days prior to their apprehension, a sum of Rs. 1,38,000/- had been transferred at the behest of the appellant through his own account and that of his sister-in-law. No explanation is forthcoming from the appellant with regard to the frequent telephonic conversations between himself, A-1 and A-2 as well as the aforesaid monetary transactions soon before the apprehension of the co-accused persons with a large volume of FICNs. These materials prima facie give rise to a strong suspicion that the appellant playing an active role in the circulation of high quality of FICNs through other accused persons.

6. Under such circumstances, we are of the opinion that the prima facie role of the appellant in the alleged crime is disclosed and the rejection of the prayer for bail by the court below is justified."

32. In *J. Kaleel Rahman v. State of Maharashtra* (Criminal Appeal No. 118 of 2021, decision dated 24th August, 2021), the *Id.* Division Bench of the Bombay High Court was also considering an appeal challenging the rejection of grant of bail in a similar scenario involving FICNs. In the said decision, the Appellant (Accused No. 3) was implicated in a conspiracy with two other accused to smuggle FICN from Malaysia. The other accused deposited had Rs. 45,000/- in the Appellant's bank account in January, 2020 on instructions from a wanted accused in Malaysia, towards the cost of FICN valued at Rs.1,00,000/-. The Appellant, who was in Malaysia at the time, returned to India on 21st January, 2020 and withdrew Rs. 50,000/- from the account the next day. Subsequently, the Appellant was arrested on 27th February, 2020 at Chennai Airport upon his return from Malaysia. The Appellant claimed ignorance about the depositors. His bail application was denied by the Special Judge, NIA Court, based on material evidence. The *Id.* Division Bench of the Bombay High Court refused to interfere with the findings of the *Id.* Trial Court, and observed as follows:

"23. At this juncture, had the appellant offered a plausible explanation as to the identity of the person who deposited the said amount and its purpose, the nature of the act, i.e. credit of the amount, which is not per se objectionable, would have eroded the potency of the accusation. When confronted with multiple transactions in the said account, the appellant offered an explanation that those amounts were deposited in his account by persons, at the instructions of one Mr. Azam based in Malaysia, and he withdrew those amounts in cash and passed/transferred the same to different persons as directed by the said Mr. Azam and earned commission. An endeavour was thus made to explain away the transactions as being one of money laundering (hawala) nature.

24. In contrast, the appellant claimed that he was working as a Salesman in a shop at Malaysia on daily wage basis for livelihood. In the backdrop of the situation in life of the appellant, the appellant, the sum of Rs.45,000/-, cannot be said to be so small an amount as not to arouse inquisitiveness on the part of the appellant about the source of credit. Mere feigning ignorance, in the aforesaid circumstances, is not, therefore, sufficient to indicate that the accusation against the appellant is not prima-facie true.

27. In the case at hand, the material prima-facie does not appear to be such that the appellant could extricate himself on the premise that though he had the knowledge that the amount of Rs.45,000/- was deposited in his account yet he was not aware of the purpose for which the said amount was deposited. At the cost of repetition, it needs to be recorded that the appellant had the opportunity, at the very initial stage, to explain the purpose for which the said amount was deposited. No such explanation was forthcoming, even when the bail application was considered by the learned Special Judge, NIA Court.

28. For the foregoing reasons, we are persuaded to hold that the interdict contained in section 43D(5) of UAPA operates with full force and vigour. In the circumstances, no fault can be found with the view of the learned Special Judge that the bar under section 43D(5) of UAPA came into operation. Resultantly, no interference is warranted in the impugned order."

33. In *Shahnawaz Ansari @ Bunty Ansari @ Bunty v. Union of India* (2023:AHC-LKO:75615-DB), the Appellant challenged the order passed by the Id. Special Judge which rejected the third bail application of the Appellant under various sections of the IPC, UAPA, and Arms Act. The Appellant was not named in the initial FIR or the first charge sheet, and was only implicated in a supplementary charge sheet based on statements from co-accused, despite no recovery of forged currency from him.

34. In the said decision, the Allahabad High Court considered the telephonic conversations and transcripts of intercepts between one Murad Alam and the Appellant both before and after the delivery of a consignment of fake currency notes, establishing that they were part of a larger conspiracy, including accused Tausif Alam. The charge sheet gave details of the mobile numbers of

the accused and mentions that one Tausif Alam was in contact with the Appellant during Murad Alam's travel to Bengal to collect FICN. The Id. Division Bench of the Allahabad High Court, while refusing to interfere with the decision of the Id. Special Judge, also considered transcripts and CDRs that indicated that one Murad Alam travelled under Appellant's direction, received funds from him for the journey, and maintained contact throughout the trip. The relevant portions of the said decision are extract below:

"14. We have perused the charge sheet/ report and find that in paragraph No.15.5 thereof, there is mention of recovery of a mobile from the present appellant, Shahnawaz Ansari, which was sent to CFSL, Hyderabad for scientific examination. The charge sheet in paragraph No.16.6 refers to CDR details and its analysis. According to which, the telephonic interconnections and transcripts of legal intercepts between Murad Alam and Shahnawaz Ansari, accused- appellant herein, before and after delivery of consignment of fake currency notes, established that it was a part of larger conspiracy of which the appellant and accused, Tausif Alam were a party. Details of mobile number of the accused are also mentioned in the charge sheet. In paragraph No.16.8, it has been mentioned that Tausif Alam was connected to Shahnawaz Ansari during travel of Murad Alam to Bengal to collect FICN. According to the prosecution, the transcripts along with CDRs has established that Mohammad Murad Alam had travelled on the directions of Shahnawaz Ansari and later he had given him funds for the journey and was also connected to him throughout the onward and return journeys. Shahnawaz Ansari was directing Murad Alam regarding time and place of meeting with Tausif Alam. Various other communications have also been revealed. The aforesaid paragraphs of the report/ charge sheet as also paragraphs No.17.1, 17.3, 17.4, 17.5, 17.6, 17.7, 17.8, 17.9, 17.10, 17.11 etc. referred to the involvement of the appellant herein in commission of the crime with which the accused have been charged. Based on facts and evidence referred in the report/ charge sheet submitted against the appellant, another accused, we have no hesitation in recording that there are reasonable grounds for believing that the accusation against the appellant is prima facie true. This of course is without prejudice to his rights in the pending trial. Merely because there is no recovery from the appellant does not persuade us to take any other view of the matter considering his alleged involvement in the commission of crime with which he has been charged especially as he has been charged with the offences punishable under Section 120B read with 489B, 489C I.P.C. and Sections 16 and 18 of the Act, 1967.

15. We have perused the order of the court below dated 02.03.2023, which is impugned herein, the court below has rejected the third bail application on the ground that there is evidence pertaining to communication between the accused, Murad Alam and the appellant herein.

16. Having gone through the contents of the report/ charge sheet submitted under Section 173(2) Cr.P.C. in the light of the provisions contained in the proviso to Section 43D(5) of the Act, 1967 and also otherwise in the light of the provisions

contained in Section 489B I.P.C. etc. with which the appellant has been charged and looking into the evidence available against the appellant as mentioned in the charge sheet as also his criminal history of five other cases as has been detailed in paragraph No.17.11 of the charge sheet, relevant extract of which is at page No.39 of the present criminal appeal and as out of the five criminal cases, four are in respect of offences of similar nature as are alleged to have been committed by the appellant in this case, we are not inclined to allow this appeal as we do not find any error in the order of the court below in rejecting the third bail application preferred by the present appellant."

35. The above decision passed by the Id. Division Bench of the Allahabad High Court was assailed before the Supreme Court in SLP (Crl.) 377/2024 titled 'Shahnawaz Ansari@ Bunty Ansari v. Union of India'. Vide order dated 12th January, 2024, the Supreme Court refused to interfere with the judgment passed by the Id. Division Bench of the Allahabad High Court.

36. The present case ought to be considered in the backdrop of the above decisions and the facts, which have emerged on record.

37. A perusal of the charge sheet in the present case shows that the Appellant is 29 years old, and is described as a money exchanger. The charge sheet relies upon forensic reports received from CFSL, CBI in relation to the voice messages retrieved from the data of Amir-Ul-Haq. Regarding the Appellant, the allegation in the charge sheet is that he handed over Rs. 10,000/- and Rs. 20,000/- on two occasions to A-2 Amir-Ul-Haq in the first week of January, 2022. The conversations also reveal that he is in touch on a regular basis with the other co-accused and is also working under directions of Abdul Qadir @Sheikh Sahab. The Appellant is also being referred to regularly in conversations as though he is part of the team. The relevant portion from the charge sheet is extracted below:

"17.3.14 In the first week of January 2022, A-3 had handed over cash amounting to Rs. 10,000 & 20,000/- to A-2 on two occasions on the direction of Abdul Qadir @ Sheikh Sahab 2-3 days prior to the seizure of consignment by the custom officials at IGI Airport, A-2 went to A-3's shop. A-3 handed over 24500/- Saudi Rial to A-2 as per directions of Abdul Qadir @ Sheikh Sahab. This was supposed to be handed over to accused A-1 as his commission for this consignment. Transcript of some incriminating voice clips regarding transactions of currency retrieved from the mobile data of A-2 is as under:

□Amir asking Sheikh Saab "main ek diary bana di hai 12000 ki, 18000 aa jayenge haath me, ye ho gye 30,000 aur saddam bhai se liye hain maine 35000, 4000 karke bache hue the, 1000 pehle ka bacha hua tha, total ho gye 40000, 40000 me se 18000 haath me hain, 12000 ki diary, bane 30000, bache 10000, 10000 lage diye fitting me, ab saddam bhai ne mujhe 1620 Kuwaiti Dinnar diye hain, ab iska kya karna hai?, Stick me daal du?"

□Amir speaking "bataiye sheikh saab, total 40 chiyea ya 45? Saddam bhai se maine sirf 35 bola hal, 5 rakha hua hai 40000 ka, agar 45 karna hai to, saddam bhai ko 40 boloonga, 5 rakha hua hai 45 ho jayega. Bata dijiye aap mujhe □Amir speaking "aaj ki Rehan ki ticket issliyea nahi bani, GDRF ka approval nahi aaya tha uska, RR ho jata banda, Mansoor bhai keh rahe hain ki iska approval nahi aaya tha RR ho jata, isliye aaj ki nahi ho pai. Ab kal ki hai iski seat. Abhi maine poocha time kitne baje ki hai fir usi hisab se panja launga, saddam bhai ke paas hi baitha hua hun. Aur main ye keh raha tha ki 4000 kal ka bacha hua hai panja humare paar aur 1000 parso ka."

□Sheikh Saab speaking "Sheikh saab Saddam ke yaha se 37500 ka purchase hai aur yaha par hai 36500, to zara batao."

38. The charge sheet also states that the Appellant had arranged for visas and air tickets & courier at the behest of Abdul Qadir. Relevant part is set out below:

"17.4 Role of Abdul Wahid Saddam (A-3):

He was arrested for his role in the conspiracy on 04.03.2022. Investigation has revealed that before this consignment, around 10-15 consignments had already been delivered in Delhi. A-3 arranged all the visa and air tickets to the couriers at the behest of Abdul Qadir @ Sheikh Sahab. A-3 had paid Rs. 30,000/- to 50,000/-

approx. for visa/tickets of each courier to Mansoor- uddin @ Mansoor A-3 used to keep records of such money distribution/receipt in one note pad which has been seized and sent to the CFSL (CBI) for forensic examination."

39. The charge sheet also records recovery of the Notepad/diary in the hand writing of the Appellant, mentioning various amounts received.

40. The Trial Court considered the main charge sheet and the order on charge passed by the Trial Court on 31st May, 2023. In the said order, insofar as the Appellant is concerned, the following are the observations of the Trial Court.

"57. Having considered the submissions, taking into consideration the statement of PW-10 and PW-11 as discussed above wherein it has come that it is A-3 who used to fund for arranging visa, tickets etc. for different human couriers for import of goods. Beside the statement of these two witnesses, there is also statement of PW-12 Faiz Ahmad who stated that A-3 was in direct contact with Abdul Qadir and A-3 was looking after his work at Delhi. It also came in the statement of this witness that A-2 used to come at the counter of A-3 and used to drop bundle of cloth, smuggled from Dubai to India. Statements of these witnesses coupled with circumstance of recovery of FICNs from the courier i.e. A-1 regarding which money was paid by A-3 through A-2, clearly show that A-3 was part and parcel of larger conspiracy under which different consignments containing high quality FICNs, gold and other contraband were being smuggled beside burqa to be sold in the market. Therefore, it cannot be

stated that there was no knowledge to A-3 regarding consignment containing high quality FICNs. ...

59. There cannot be any denial to ratio laid down in said judgment to the effect that smuggling of gold simpliciter will not fall within section 15 (1)(a)(iii a) of UA(P) Act but in the facts of the present case there is actual recovery of high quality fake currency notes from A-1 and such recovery of fake currency notes was found to be with the intent causing damage to monetary stability of India by smuggling such high quality FICNs and circulating it in Indian market. Therefore Id. Counsel for the accused cannot take any benefit from the above said judgment. Similarly, other judgments relied upon are distinguishable in the facts.

60. Different circumstances, statements of witnesses cannot be separated from actual recovery of high quality FICNs in the (sic.) bundle of cloth from A-1. It also came in the evidence that A-3 was maintaining all the details of account of funds in the note book recovered from him. Thus, such circumstance, statement of different witnesses clearly show that A-3 was part of larger conspiracy and therefore he is liable to be charged for offence u/s 18 of UA(P) Act and alternatively for offence u/s 489C r/w 120B IPC. However A-3 stands discharged for offence u/s 16 of UA(P) Act and 489B of IPC."

41. Thus, the Trial Court has framed charges under Section 18 of the UAPA against the Appellant and has discharged the Appellant under Section 16 of the UAPA.

42. A perusal of the disclosure statement made by the Appellant shows that he admits that in December, 2021, Abdul Qadir had called him and asked, if he would hand over some Indian currency, which would be sent to unknown persons. Relevant portion of the said disclosure statement reads as under:

"Once in December 2021, Abdul Kadir bhai called me and asked that he will send Indian currency, which I have to handover to some unknown persons. This time in first week of January 2022, he sent Fake Indian Currency Notes (FICNs). I was not aware about FICNs but Kadir had told me that this consignment is very important and he will inform to whom this consignment was to deliver, once it reaches at Delhi. In the first week of January 2022, I handed over Amir Rs. 10,000 to 20,000/- on two occasions on the direction of Abdul Kadir. 2-3 days before the seizure of consignment by the custom officials at IGI Airport, Amir-ul-Haq came to my shop and I handed over him 24500/- Saudi Rial as per directions of Abdul Kadir to further hand over to Shahjan as his commission for this consignment. Custom officials apprehended Shahjan at IGI airport with Rs. 10 lakh FICNs. Before this consignment, around 10-15 consignments have already delivered in Delhi. I arranged all the visa and air tickets to the couriers at the behest of Kadir. Irshad, worker of Mansoor used to handover visa documents and tickets to me and I further hand over it to Amir. I have paid Rs. 30,000/- to 50,000/- approx. for visa/tickets of each courier to Mansoor. At this

time, I do remember some names of the couriers vis-à-vis Kashif Ali, Khaldi, Raju Shah and Rehan who have earlier brought consignments from Dubai but record of all these names will be with Mansoor I have also kept records of money distribution/receipt in one Note pad, which I have kept with my business partner Faiz Ahmed at his shop counter"

43. The Respondent-NIA relies upon the statements of PW-10, PW-11, and PW-12. In his statement, PW-10 clearly stated that he used to deliver several air tickets and visas to the Appellant. PW-10 also confirmed that when he was unclear about why there were so many air tickets and visas, he was informed by Amir-Ul-Haq that Abdul Qadir was his business partner from whom he used to import goods and thus required carriers for this work. PW-11 also stated that the Appellant was actively involved in the business of air tickets and visas and described how they were being booked under the directions of Abdul Qadir. PW-11 further stated that he had received several payments from the Appellant for visas and air tickets for various travelers on different occasions.

44. PW-12 confirmed that the Appellant used to run a money exchange counter outside his shop. He also stated that the Appellant was in direct contact with Abdul Qadir, who was in Dubai. One important statement made by PW-12 is that Amir-Ul-Haq used to pick up and drop bundles of burkha cloth at the Appellant's counter. In fact, when the seizure was made at IGI Airport from Mohd. Shajan, the high quality FICN were hidden in bundles of cloth. PW-12 also stated that the Appellant used to make entries of the payments received and distributed, in a Notepad (Ex. D-22/A). The Notepad, which was seized, contains various entries for different amounts. Entries in the Notepad also mention Abdul Qadir, several payments against various amounts. The Notepad has been examined by CFSL, CBI which confirmed the handwriting as that of the Appellant (Handwriting Examination Report dated 11th August, 2022, Ex. D-22/C).

45. Various transcripts of phone conversations recovered on 12th January, 2022 from the mobile device of Amir-Ul-Haq have been translated and placed on record (Ex. D-46), repeatedly referencing the Appellant.

46. All these facts, in fact, have also been considered and analysed by the Trial Court. The evidence, which is on record, read along with the statement made by PW-10, PW-11 & PW-12, do point towards the fact that there are reasonable grounds to believe that the Appellant was an active player in the circulation of high quality counterfeit Indian currency.

47. So far as the contention of the Id. Counsel for the Appellant with regard to claim of parity with A-4 Amandeep Singh is concerned, it is noted that the Id. Trial Court after analysing the material on record had come to the conclusion that the Prosecution has not been able to establish any case qua the said accused. The Id. Trial Court observed as under:

"69. Having considered the entire facts, material and statement of different witnesses relied upon by prosecution as against A-4, first of all it be noted that nothing has been recovered from A-4 either on 12.01.2022 when he allegedly travelled in the same flight in which A-1 also came to Delhi from Dubai. As per prosecution case the

luggage of A-4 was cleared during luggage scan and A-4 came out of the airport on the same day. Later in the investigation also, nothing has been recovered from A-4. There is no recovery when raid conducted at his house nor any incriminating material recovered from the digital devices of A-4. Most importantly there is no inter connectivity of A-4 with A-2, A-1 or any other accused.

70. Now if I examine the statement of different witnesses, even if it is taken on the face of it that A-4 with the help of PW-26 Gaurav as well as one Anoop Singh of Ludhiana and one Naqi Ahmad @ Sahil went to Dubai with his friend as a human courier, in the absence of any recovery or any incriminating evidence of any circumstance or direct, the fact that A-4 had gone to Dubai and image of A-4 was shared by Abdul Qadir with A-2, which was retrieved from mobile data of A-2, in the absence of any overt act having been committed by A-4 does not establish even prima facie for the purpose of charge that A-4 was in any manner part of conspiracy."

48. Hence, the case of the Appellant stands on a completely different footing from as that of A-4 Amandeep Singh.

49. A perusal of the above shows that there are sufficient grounds at this stage to believe that the allegations against the Appellant are prima facie true.

50. Circulation of fake currency impinges upon the economic security of the country, and such circulation could have a disastrous effect on the economy. The term 'economic security' has been specifically added as a 'terrorist act' under Section 15 of the UAPA in 2013, along with an Explanation (b) defining 'high quality counterfeit Indian currency'. Persons who may be involved in circulation of fake currency, operate through several back-channel networks, which span across countries. They do not use usual channels of communication, and fake currency is usually introduced into the market in an extremely clandestine manner. Penetration of networks related to fake currency can pose a grave challenge for the investigation agency as well.

51. At this stage, the evidence on record does not point to the innocence of the Appellant, but on the contrary prima facie points to the fact that the Appellant is involved in facilitating the circulation of high-quality counterfeit Indian currency.

52. The mention of various names in the Notepad/diary, which has been proven to be in the handwriting of the Appellant, indicates that the Appellant has connections with individuals directly involved in the handling of fake currency.

53. Further, the tests laid down by the Supreme Court in Gurwinder Singh (supra) are fully satisfied in the facts of the present case. One of the factors laid down even in Zahoor Ahmad Shah Watali (supra) which has been reaffirmed by the Supreme Court in Gurwinder Singh (supra) for consideration of bail, is that if the charge is framed, it is safe to assume there is a strong suspicion based on the material, which is satisfied in this case. The relevant portion of the decision in Gurwinder Singh (supra) reads as follows:

"Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post Charges - Compared [para 23]:

Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the chargesheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case."

54. The Appellant's claim that he was unaware the currency being dealt with was fake would also need to be established before the Trial Court at the appropriate stage. The stand of the Appellant, that he is merely involved in the business of import/export of burkhas and other garments and gold, would have to be raised as a defence to be established before the Trial Court.

55. At this stage, the trial is ongoing, and two witnesses have been examined. The Appellant has been in custody for two years. Considering the maximum punishment prescribed under Section 18 of the UAPA, and the present stage of the trial, this Court is not inclined to grant bail to the Appellant at this stage. The impugned order of the Id. Trial Court dated 28th February, 2024 does not warrant any interference this Court.

56. The appeal is, accordingly, dismissed. No order as to costs. All pending applications, if any, are disposed of.

57. Let the present order be communicated to the concerned Jail Superintendent, and the Id. Trial Court for information.

PRATHIBA M. SINGH JUDGE AMIT SHARMA JUDGE AUGUST 07, 2024/dk/dn