

A.F.R.
RESERVED ON - 11.8.2022.
DELIVERED ON - 23.8.2022.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

Court No. - 1

Case :- Criminal Appeal No.1597 of 2022

ALAM @ MOHAMMAD ALAM

..... Appellant.

(In Jail)

Versus.

1. STATE OF U.P.
2. SPECIAL TASK FORCE (U.P.)

THROUGH its ADG (STF)/S.P. (S.T.F.). - **Respondents.**

Counsel for the Appellant :- Shri Amarjeet Singh Rakhra,
Advocate.

Counsel for the respondents:- Shri Umesh Chandra Verma,
Additional Government Advocate

Hon'ble Ramesh Sinha,J.

Hon'ble Mrs. Saroj Yadav,J.

By filing this appeal under Section 21 of the National Investigation Agency Act, 2008 (hereinafter referred to as NIA Act), the appellant Alam @ Mohd. Alam has challenged the order dated 30.5.2022 passed by the learned Additional District and Sessions Judge, Court No.3/Special Judge, NIA Special Court, A.T.S., Lucknow (in short Special Court) whereby bail application of the appellant was rejected.

The bail application of Sidhique Kappan was heard and rejected by learned Single Judge of this Court on 2.8.2022. That was so heard because at that time the bail application of Sidhique Kappan was decided by learned Additional District and Sessions Judge, Court No.1, Mathura as the case was

pending in the court of Mathura District. Thereafter, on the application moved by the prosecution, the case was transferred to Special Court, Lucknow, the court established for trying the cases of such nature. The application was allowed per order dated 13.12.2021 and the case was transferred to the Special Court, Lucknow. This case was investigated by the Special Task Force.

Under Section 21 sub clause (2) of the NIA Act, the appeal shall be heard by a Bench of two Judges of the High Court. For this reason, this appeal has been listed and heard by this Division Bench.

The appellant is presently in jail having been arrested on 5.10.2020 in Case Crime No.0199 /2020, Police Station Manth, District Mathura, wherein a chargesheet has been filed in court on 2.4.2021 under Sections 153-A, 295-A, 124-A, 120-B of the Indian Penal Code,1860 (in short I.P.C.), Sections 65 and 72 of the Information Technology (Amendment) Act, 2008 and Sections 17 and 18 of The Unlawful Activities (Prevention) Act, 1967 (in short UAPA).

The bail application filed by the appellant was rejected by the learned Special Court observing that the accused/ appellant is named in the First Information Report (in short F.I.R.) and the chargesheet had been filed against him after investigation, so at this stage, it cannot be said that he is completely innocent. The learned Special Court further

observed that the application of the co accused has already been rejected, hence in view of the learned Special Court, the accused appellant was not entitled for bail and the Special Court rejected the bail application. Being aggrieved of this rejection order, this appeal has been preferred.

Heard Shri Amarjeet Singh Rakhra, learned counsel for the appellant and Shri Umesh Chandra Verma, learned A.G.A. for the respondent.

Learned counsel for the appellant Shri Rakhra argued that :-

- i). Even from the perusal of the F.I.R. No.0199/2020, it is clear that the appellant has no role in the commission of the alleged offence. He was just ferrying the passengers in his taxi to the place of their destination.
- ii). There is no allegation against the appellant that he was associated with any terrorist organization or was soliciting any donation or funding or had any linkage with either P.F.I. or C.F.I.
- iii). No incriminating material was recovered from the possession of appellant or on his pointing out and a thorough investigation of his technical footprints (Mobile Data records and Social Website etc.) revealed that the

appellant is not associated with any suspicious or anti national activities.

iv). It is an admitted position that the investigating agency has found no link of receiving any financial aid from any suspected organization or individual nor any heavy /suspicious transactions in the Bank account of the appellant were traced.

v). The appellant is neither engaged in any unlawful activity as defined under Section 2(o) of the UAPA nor is a part of any unlawful association as defined under Section 2 (p) of UAPA.

vi). The offences under Sections mentioned in the chargesheet are not made out against the appellant even if the story of the prosecution is believed on its face value. Sections 17 and 18 of the UAPA which relates to raising funds for terrorist activities and punishment thereof and conspiracy for committing any terrorist act and punishment thereof are not even remotely attracted to the facts of the case.

vii). From a bare perusal of the F.I.R., the chargesheet prepared and the material/evidence collated by the investigating agency, it is abundantly clear that no 'terrorist act' as defined under Section 15 of UAPA is made out as, neither of the alleged provisions of Section 17 and 18 of the UAPA are attracted. The Special Court

has completely failed to appreciate that the perusal of the allegations made in the F.I.R. and the contents of the case diary including the chargesheet and material collated by the investigating agency clearly evince that accusation made against the appellant is *prima facie* false.

viii). In view of the provisions of Section 43-D (5) of the UAPA, it is the duty of the court dealing with the bail application of the accused to satisfy itself with regard to there being reasonable grounds for believing that the accusation against the accused is *prima facie* true. This provision has been inserted with a view to ensure that the stringent provisions of the U.A.P.A. are not misused against innocent persons. In the present matter, the learned Special Court has completely failed to satisfy itself about the applicability of Section 43-D (5) of the UAPA and has merely rejected bail application of the appellant merely because a chargesheet has been filed against him and the bail application of the co accused was rejected.

ix). There was neither any occasion nor any motive for the appellant to commit the offence in question. The appellant is languishing in jail for approximately two years even though there is no *prima facie* case against

him and no active role has been attributed to him by the investigating agency.

x). The investigating agency has already filed a chargesheet against the appellant and the trial is yet to commence.

xi). It is a settled position of law that presence of statutory restrictions like Section 43-D (5) of UAPA, *per se* does not oust the ability of the Constitutional Courts to grant bail on grounds of violation of Part-III of the Constitution of India. Indeed, both the restrictions under the statutes as well as the powers exercisable under constitutional jurisdiction may be well harmonised.

xii). There are around 55 witnesses of the prosecution as per the chargesheet and while the appellant is languishing in jail for almost two years, the trial is yet to commence.

xiii). There is not even a *prima facie* case, establishing the complicity of the appellant and the nature and gravity of charges and the absence of criminal history on his part require his release on bail.

xiv). By the Hon'ble Supreme Court in the case of ***S.G.Vombatkere Vs. Union of India, Writ Petition (C) No.682/2021*** rigour of Section 124-A I.P.C. has been taken away and its application in the pending cases

has been kept in abeyance. The sections mentioned in the chargesheet except Section 124-A I.P.C. denote no serious offence.

xv). No criminal antecedents could be found by the investigating agency after a thorough investigation. Hence, considering above submissions, the appeal may be allowed and the appellant be released on bail.

Learned counsel for the appellant has relied upon the following case laws :-

a). *Asif Iqbal Tanha Vs. State of NCT of Delhi. : MANU/DE/1095/2021 : (2021) 3 SCC (Del) 106.*

b). *The National Investigation Agency, Ministry of Home Affairs, Govt. of India. Vs. Akhil Gogoi : MANU/GH/0179/2021*

c). *Union of India Vs. K.A.Najeeb. : (2021) 3 SCC 713.*

d). *Thwaha Fasal Vs. Union of India reported in AIR Online 2021 SC 963*

To the contrary, Shri Umesh Chandra Verma, learned A.G.A. countered the arguments of the learned counsel for the appellant and argued that :-

i). The Special Court has rejected the bail application of the appellant giving valid reasons.

ii). A chargesheet has been filed against the appellant after collecting sufficient evidence against him. At the time of arrest, one mobile phone was recovered from the appellant. However, pamphlets etc. were recovered from the co-accused persons. Sufficient evidence of the use

of money received from terror funding to purchase the car being used by the appellant has been found in investigation.

iii). On 5.10.2020, the applicant and co accused persons were arrested under the provisions of Section 151 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) for the proceedings of Sections 107/116 of Cr.P.C. in an apprehension of disturbing the peace by going to Hathras which was mentioned in the G.D. No.41 of the Manth Police Station, Mathura but after that on examining the six phones, one laptop and 17 printed papers recovered from the possession of the accused and co-accused persons, the conclusion drawn by the investigating officer Sub-Inspector Mr. Prabal Pratap Singh, the F.I.R. in question was registered against the appellant and co-accused persons on 7.10.2020 at 6.13 a.m. at Police Station Manth at Crime No.199/2020.

iv). During the investigation of the case Crime No.136/2020 registered at Police Station Chandapa on 14.9.2020 about the unfortunate incident occurred at Harthras wherein a girl was killed, it was revealed that the appellant and his associates were the members of one such organization which intended to disturb the law and order in Hathras, to implement their nefarious designs.

v). The so-called taxi of the appellant was registered with OLA Company but the taxi was not booked through OLA Company by the appellant to take co-accused persons to village Boolgarhi, Hathras. As per the inputs received, the taxi i.e. Swift Desire Car No. DL-1ZC 1203 was registered with OLA Company only to escape it from scrutiny. The real fact is that the taxi in question was being used for some criminal activities. From the investigation, it has come to light that during the period of lock-down when taxi business was completely closed, the taxi in question was purchased by the appellant from one Mohd. Anees on 25.9.2020 by paying Rs.2,25,000/- in cash, just 10 days prior to the incident. It shows that the amount of Rs.2,25,000/- was received by the appellant from PFI/ CFI. The appellant could not offer any plausible explanation as to how he arranged that money.

vi). The appellant drove his car as OLA Cab and there is no shortage of passengers for OLA Cab in NCR but still the booking of OLA car was not taken by the appellant on the date of incident just to help the members of the PFI on the direction of his relative Danish.

vii). The past criminal history of the appellant is not known, however, the criminal history of Ateek-ur-

Rahman and Danish, brother-in-law (Sala) of the appellant has come to light.

viii). The appellant is associated with the PFI organization which is involved in terrorist activities in the country and is trying to create unrest in the country by spreading caste and religious animosity.

ix). The bail application of the accused appellant was rejected by the learned Special Court on the basis of sufficient grounds as ample evidence is there against the appellant, hence the appeal should be dismissed.

Learned A.G.A. relied upon following case laws :-

a). The ***National Investigation Agency Vs. Zahoor Ahmad Shah Watali : (2019) 5 SCC 1.***

b). Ramjhan Gani Paloni Vs. National Investigation Agency : 2022 SC 2070.

Considered the rival submissions and gone through the case laws cited and the material available on record.

It is an admitted fact that the appellant was arrested while driving the other co-accused persons to Hathras in his taxi/car Swift Desire Car No. DL-1ZC 1203.

The allegation of the respondents is that he was so driving the co-accused persons for committing the alleged crime. It is also admitted that chargesheet has already been filed against the appellant under Sections 153-A, 295-A, 124-A, 120-B of I.P.C., Sections 65 and 72 of the Information

Technology (Amendment) Act, 2008 and Sections 17 and 18 of UAPA.

In the chargesheet which has been annexed as Annexure No.CA-5 to the counter affidavit, the following observations has been made against the appellant :-

"अभियुक्त आलम सह अभियुक्त दानिश का रिस्तेदार है। दानिश पीएफआई का त्रिलोकपुरी वार्ड का अध्यक्ष है जो पूर्वी दिल्ली में दंगों के दौरान हिंसा करने, जिसमें लगभग 51 लोग मारे गये थे, के अभियोग में अभियुक्त है। अभियुक्त आलम पेशे से टैक्सी चालक है जिसने योजना के अनुसार घटना से पूर्व दिनांक 24.09.2020 को 2.25 लाख रुपया नकद देकर टैक्सी खरीदी है। आलम के बैंक खाते के अवलोकन से उसके खाते में नाममात्र का रुपया जमा है। पीएफआई के लोगो एवं सह अभियुक्तों द्वारा आतंकी गिरोह को प्राप्त फंडिंग से नकद रुपया देकर उसके उद्देश्य की पूर्ति के लिए गाड़ी खरीदवाई गयी है। अभियुक्त आलम दिनांक घटना को हाथरस सह अभियुक्तों के साथ जा रहा था जबकि वह ओला कम्पनी में टैक्सी लगाकर बुकिंग का कार्य लेता है। परन्तु दिनांक घटना को ओला कम्पनी से गाड़ी बुक नहीं की गयी थी जिससे यह स्पष्ट होता है कि आलम सह अभियुक्तों के साथ घटना को अंजाम देने के षडयंत्र में शामिल था।"

It is also admitted that initially the appellant was challaned under Section 107/116 Cr.P.C. and ordered to file the bonds but he failed to file bonds. Thereafter the F.I.R. in question was registered. The allegations of prosecution is that in investigation, the material evidence was found against him.

In **National Investigation Agency Vs. Zahoor Ahmad Shah Watali (supra)**, the Hon'ble Supreme Court has held as under :-

"21. Before we proceed to analyse the rival submissions, it is apposite to restate the settled

legal position about matters to be considered for deciding an application for bail, to wit :

- (i). Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- ii). nature and gravity of charge;*
- iii). severity of the punishment in the event of conviction;*
- iv). danger of the accused absconding or fleeing, if released on bail;*
- v). character, behaviour, means, position and standing of the accused;*
- vi). likelihood of the offence being repeated;*
- vii). reasonable apprehension of the witnesses being tampered with;*
- (viii). danger, of course, of justice being thwarted by grant of bail."*

After careful examination of the material available on record, the only evidence against the appellant on which the prosecution hammered much, is the payment of Rs.2,25,000/- made to one Anees for purchase of the vehicle which he was driving at the time of the incident. The learned A.G.A. argued that the money which he paid was earned by him out of terrorist funding as the economic condition of the appellant was not sound enough to pay for the same.

Learned counsel for the appellant countered the argument and offered an explanation in this regard that the appellant borrowed the money from his cousin namely Mehboob Ali who has filed affidavit stating the same and also explained the source of money from which Mehboob arranged that money. No question has been raised on the affidavit filed by Mehboob Ali and on the fact explained by Mehboob Ali as to how he resourced Rs.2,25,000/- to the appellant. One more important argument of learned A.G.A. on which he pressed

hard is that the appellant used to ply his vehicle for OLA Company but on the day it was not booked through Company rather booked directly. The appellant has admitted that it was booked directly and explained, as that was COVID period and he could get some more money through direct booking in comparison to the booking through OLA, so he preferred the direct booking and ferried the passengers to their destination. He further submitted that there was no restrictions from OLA company to take direct booking.

Learned A.G.A. has not disputed the fact that a Cab associated with OLA Company could take direct bookings. It was also argued vehemently by learned A.G.A. that the appellant is a relative of Danish who has criminal antecedents and was found associated with many riots committed in Delhi regarding CAA protest.

Learned counsel for the appellant admitted that Danish is cousin of the appellant but submitted that he has no association or link with the crimes alleged against him. The only connection found in this regard is that he made a telephone call to the appellant to get the taxi booked.

No incriminating article has been found and no such material could be detected from the mobile phone of the appellant as to show his association with the terrorist or terrorist activities. Mainly, the grave offence under Section 124-A of I.P.C. is there in chargesheet but the Hon'ble

Supreme Court has put the effect of Section 124-A I.P.C. in abeyance in the case of **S.G.Vombatkere Vs. Union of India, Writ Petition (C) No.682/2021**.

In **Asif Iqbal Tanha Vs. State of NCT of Delhi(supra)**, the Hon'ble High Court of Delhi has held as under :-

"61. Once we are of the opinion, as we are in the present case, that there are no reasonable grounds for believing that the accusations against the appellant are prima facie true, the Proviso to Section 43D(5) would not apply; and we must therefore fall back upon the general principles of grant or denial of bail to an accused person charged with certain offences.

64. The observations of the Hon'ble Supreme Court in Mazdoor Kisan Shakti Sangathan (supra) appear to us to be the most lucid and pithy answer as to the contours of legitimate protest and these bear repetition. In the said decision the Hon'ble Supreme Court says that legitimate dissent is a distinguishable feature of any democracy and the question is not whether the issue raised by the protestors is right or wrong or whether it is justified or unjustified, people have the right to express their views ; and a particular cause, which in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. The Hon'ble Supreme Court further says that a demonstration may take various forms : it may be noisy, disorderly and even violent, in which case it would not fall within the permissible limits of Articles 19(1) (a) or 19(1) (b) and in such case the Government has the power to regulate, including prohibit, such protest or demonstration. The Government may even prohibit public meetings, demonstrations or protests on streets or highways to avoid nuisance of disturbance of traffic but the Government cannot close all streets or open areas for public meetings thereby defeating the fundamental right that flows from Article 19(1) (a) and 19(1) (b) of the Constitution.

66. In our view, on an objective reading of the allegations contained in the subject charge-sheet, there is complete lack of any specific, particularised, factual allegations, that is to say allegations other than those sought to be spun by mere grandiloquence, contained in the subject charge-sheet that would make out the ingredients of the offences under Sections 15, 17 or 18 UAPA. Foisting extremely grave and serious penal provisions engrafted in Sections 15, 17 and 18 UAPA

frivolously upon people, would undermine the intent and purpose of the Parliament in enacting a law that is meant to address threats to the very existence of our Nation. Wanton use of serious penal provisions would only trivalise them. Whatever other offence(s) the appellant may or may not have committed, at least on a prima facie view, the State has been unable to persuade us that the accusations against the appellant show commission of offences under Sections 15, 17 or 18 UAPA.

71. A quick conspectus of the general principles for considering a bail plea would not be out of place at this point. Outlining the considerations for bail, in *Ash Mohammad Vs. Shiv Raj Singh and another*, the Supreme Court expressed itself as follows :-

"8. In Ram Govind Upadhya v. Sudarshan Singh : (2002) 3 SCC 598, it has been opined that the grant of bail though involve exercise of discretionary power of the court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of the crime warrants more caution and there is greater chance of rejection of bail, though, however dependent on the factual matrix of the matter. In the said case the learned Judges referred to the decision in Prahlad Singh Bhati v. NCT, Delhi and stated as follows :

"(a). While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b). Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c). While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d). Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail....."

In ***Union of India Vs. K.A. Nazeeb (supra)***, the

Hon'ble Supreme Court has held as under :-

"16. This Court has clarified in numerous judgements that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and speedy trial. In Supreme Court Legal Aid Committee Representation Under trial Prisoners v. Union of India MANU/SC/0877/1994 : (1994)6 SCC 731, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, Courts would ordinarily be obligated to enlarge them on bail.

19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the Respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the Appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the Respondent's rights guaranteed under Part III of our Constitution have been well protected.

20. Yet another reason which persuades us to enlarge the Respondent on bail is that Section 43-D (5) of the UAPA is comparatively less stringent than Section 37 of the NDPS. Unlike the NDPS where the competent court needs to be satisfied that prima facie the Accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such pre-condition under the UAPA. Instead, Section 43-D(5) of UAPA merely provides another possible ground for the competent Court to refuse bail, in addition to the well-settled considerations like gravity of the offence, possibility of tampering with evidence, influencing the witnesses or change of the accused evading the trial by absconsion etc."

In the present matter, the only evidence against the appellant which has been shown at this stage i.e. after filing of the chargesheet is that he paid Rs.2,25,000/- as a purchase money of car to one Mohd. Aneesh just few days ahead of the incident and he is a relative of Danish who has criminal

antecedents and was involved in roits of Delhi over the CAA Protest.

In regard to the above two alleged evidences, the appellant has given a *prima facie* plausible explanation. The money paid by him as per his statement was borrowed from his cousin Mehboob Ali who has filed his affidavit explaining the source of money. As far as the relation with Danish is concerned, he has admitted that Danish is cousin but specifically denied that he has any connection with the crime. Even the learned A.G.A. cannot specify the connection of the appellant with Danish of the nature that appellant is associated in any way with him regarding terrorist activities and terrorist funding etc.

The Hon'ble Supreme Corut in ***Sudesh Kedia Vs. Union of India : (2021) 4 SCC 704*** has held as under :

"13. While considering the grant of bail under Section 43-D(5), it is the bounden duty of the Court to apply its mind to examine the entire material on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not."

Admittedly, the chargesheet has been filed. There are 55 witnesses mentioned in the chargesheet and the trial has not commenced yet. It will take a long time in completion of the trial. The appellant is already in jail since 5.10.2020.

The Hon'ble Apex Court in the case of ***Ashim Alias Asim Kumar Haranath Bhattacharya @ Asim Harinath***

Bhattacharya Alias Aseem Vs. National Investigation

Agency : (2022) 1 SCC 695, has held as under :-

"10. This Court has consistently observed in its numerous judgements that the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trials imperative and the undertrials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not to possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obliged to enlarge him on bail.

11. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice."

On the basis of material available on record upto this stage, there appears no reasonable ground for believing that the accusation against the appellant are prima facie, true. *Prima facie*, there appears no complicity and involvement of the appellant with the terrorist activities or any other activity against the nation.

The case of this accused appellant is distinguished to the case of co accused Sidhique Kappan as incriminating material was allegedly recovered from his possession. He is a Press Reporter and Laptop and Mobile Phone recovered from his possession, incriminating articles and video clips etc. were found *inter-alia*. Admittedly, no such incriminating material was recovered from the possession of the present accused appellant.

No such allegation has been placed before us to show that the appellant shall if released on bail, terrorise the witnesses to depose in the case or there is possibility of his absconding. Hence, it is clear that learned trial court is not right in rejecting the bail application only for the reason that the appellant was named in the F.I.R. and chargesheet has been filed against him. Hence, considering all the facts and circumstances, aforesaid, it appears just to enlarge the appellant on bail.

The case law cited by the learned A.G.A. i.e. ***NIA Vs. Zahoor Ahmad Shah Watali (supra)*** is not applicable in this matter because in the cited case, there were recovery of many incriminating articles from the accused. The account book with details of receiving and disbursing the funds for terrorist, contact diaries containing phone numbers of Pakistan Nationals and Terrorist documents showing previous involvement of the accused in terrorist activities and CDR reveal connection with other terrorists and also photographs holding AK-47 Rifles with other terrorists etc. were recovered from the possession and house of the accused. Here in this case, admittedly no incriminating article was recovered from the possession of the accused. Only one mobile phone of the appellant was recovered from the possession and in that mobile phone, no incriminating material was found.

The case law ***Ramjhan Gani Palani Vs. National Investigating Agency and another (supra)*** is also of no help to respondents as the cited case law relates to the heavy recovery of 236.62 Kg. of Narcotic drugs. In that case, the evidence was there against the accused that accused remained in a fishing boat for five days and talked on different channels in Code Words and showing his involvement with the miscreants. Hence, the facts and circumstances of the case cited is entirely different from the case in hand.

The appeal deserves to be allowed and is accordingly ***allowed.*** The impugned order dated 30.5.2022 passed by the Special Judge, NIA/ATS, Lucknow in Bail Application No.4344/2022 arising out of Case Crime No.0199 /2020, Police Station Manth, District Mathura is hereby set-aside and the appellant Alam @ Mohammad Alam is admitted to regular bail until conclusion of trial, subject to the following conditions :

- a). The appellant shall furnish a personal bond in the sum of Rs.50,000/- (Rs. Fifty Thousands only) with 2 local sureties of the like amount, to the satisfaction of the learned trial court ;
- b). The appellant shall furnish to the investigating officer/S.H.O. a cellphone number on which the appellant may be contacted at any time and shall ensure that the number is kept active and switched-on at all times;

- c). The appellant shall ordinarily reside at his place of residence and shall inform the investigating officer if he changes his usual place of residence
- d). If the appellant has a passport, he shall surrender the same to the learned Trial Court and shall not travel out of the country without prior permission of the learned Trial Court;
- e). The appellant shall not contact, nor visit, nor offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case. The appellant shall not tamper with evidence nor otherwise indulge in any act or omission that is unlawful or that would prejudice the proceedings in the pending trial.

Here, it is made clear that observations made in this order shall not affect the trial, in any manner.

(Mrs. Saroj Yadav,J) (Ramesh Sinha,J)

Order date : 23..8.2022./Shukla.