

IN THE COURT OF SH. SAMEER BAJPAI
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI

I.A. No. 170/2023 (Tasleem Ahmed)

FIR No. 59/2020

PS : Crime Branch, Delhi (Investigated by Special Cell)
U/S. 13/16/17/18 UA(P)Act, 120B read with Section
109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/353/395/
419/420/427/435/436/452/454/468/471/34 IPC & Section 3 & 4 Prevention
of Damage to Public Property Act,1984 and Section 25/27 Arms Act

State vs. Tahir Hussain & Ors.

22.02.2024

O R D E R

- 1) The applicant Tasleem Ahmed has moved the present application u/s 439 of the Code of Criminal Procedure, 1973 read with section 43D(5) of Unlawful Activities (Prevention) Act, 1967 for grant of regular bail.
- 2) During the course of arguments ld. counsel for the applicant submitted that the present application has mainly been moved on the ground of parity as co-accused persons Devangana Kalita, Natasha Narwal and Asif Iqbal Tanha have been granted regular bail by the Hon'ble High Court of Delhi vide order dated 15.06.2021 in Crl. A. 90/2021, Crl. A. 82/2021 and Crl. A. 39/2021 respectively.
- 3) It is briefly submitted in the application that the applicant was arrested by the police on 08.04.2020 in another case and on

24.06.2020 he was wrongly and maliciously implicated in the present case i.e. FIR No. 59/2020 registered at police station Crime Branch (investigated by Special Cell) under section 109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/35 3/395/420/427/435/436/452/454/468/471/34 IPC, 25/27 Arms Act and 13/16/17/18 UA(P)A and 3/4 PDPP Act. It is further submitted that although the bail application of the co-accused persons placed similarly to the applicant was dismissed by this court, the orders were overturned by the Hon'ble High Court and the co-accused persons were admitted to bail. Further, the applicant, apart from deserving bail on merits stand alone is now also entitled to be set at liberty on the grounds of parity. It is mentioned in the application that earlier the applicant had preferred a bail application in 2021 being I.A. No. 71 of 2021 but the same was dismissed by this court vide order dated 16.03.2022, inter-alia, on the ground that the applicant could not claim parity with the co-accused persons in light of the order dated 18.06.2021 as passed by the Hon'ble Supreme Court in SLP Crl. 4289 of 2021, observing that the order granting bail to the said accused persons could not be treated as a precedent. It is further submitted that since the passing of the order dated 16.03.2022 by the Hon'ble Supreme Court, the petitioner has suffered about two years in custody, without any progress in the trial. It is further submitted that the Hon'ble Supreme Court had dismissed the SLP Crl. 4289 of 2021, wherein the aforesaid order

dated 18.06.2021 had been passed. It is further submitted that the applicant is a permanent resident of Delhi and has a family and there are no chances that he will abscond or evade trial. Further, if granted bail the applicant will abide by all the conditions as imposed by the court.

4) The prosecution replies that the present application is an attempt to mislead the court by claiming that the mentioned SLPs have been dismissed. It is submitted that the perusal of the orders on the SLPs shows that they were not dismissed and rather were disposed off, whereby the interim directions dated 18.06.2021 were made the final directions in the matter. It is mentioned that the interim directions dated 18.06.2021 were, “the impugned judgment cannot be treated as a precedent and may not be relied upon by any of the parties in any other proceedings”. It is submitted that in view of the said order of the Hon’ble Supreme Court, the position of law has not changed qua the present applicant since the disposal of his first bail application vide order dated 16.03.2022. It is also submitted that no appeal under section 21(4) National Investigation Agency Act, 2004 has been preferred against the said order and consequently the findings given by this court, although are just *prima-facie* and only for the purpose of deciding the bail application, have attained finality. It is further mentioned that in the earlier bail application also the applicant had raised grounds of parity and this court had been pleased to deal with the said plea and

the applicant was not given any favour. It is further submitted that there are no change in circumstances and rather the interim directions having been made final and therefore do not aid the case of the applicant in any manner. Further, the applicant under the guise of seeking bail on parity cannot invite an order from the court on merit again when there are no change of circumstances.

- 5) The court has gone through the record and heard arguments.
- 6) The only ground the ld. counsel for the applicant is pressing is the parity with the co-accused persons. Reading the charge sheet, ld. counsel for the applicant pointed out that at many places the role of the applicant and the mentioned co-accused persons is the same and when the mentioned co-accused persons i.e. Devangana Kalita, Natasha Narwal and Asif Iqbal Tanha have been granted bail by the Hon'ble High Court of Delhi vide order dated 15.06.2021, the present applicant should also be benefited with the same relief on parity.
- 7) In the SLP 4289/2021 and 4287/2021 the Hon'ble Supreme Court was pleased to direct that the impugned judgment i.e. the judgment of the co-accused persons as passed by the Hon'ble High Court of Delhi, shall not be treated as precedent and may not be relied upon by any of the parties in any of the proceedings. Thereafter, while disposing off the said SLPs, the Hon'ble Supreme

Court directed that with the mentioned clarifications the interim directions dated 18.06.2021 are made the final directions in the matter. It was however, clarified that if the co-accused is entitled to a plea on parity, i.e. for him to make and the court to consider.

- 8) The applicant is claiming the relief on the ground of parity with the co-accused persons namely Devangana Kalita, Natasha Narwal and Asif Iqbal Tanha as they have been granted bail by the Hon'ble High Court of Delhi vide order dated 15.06.2021.
- 9) It is important to note that in para no. 49 of the order dated 18.10.2022 with regard to co-accused Devangana Kalita, the Hon'ble High Court of Delhi concluded that that the accusations made against the appellant under section 15, 17 and 18 of the UA(P)A are not prima-facie true. In the same way in para no. 28 of the order for co-accused Natasha Narwal, the Hon'ble High Court opined that no offence under section 15, 17 and 18 of UA(P)A was made out against the appellant on a prima-facie appreciation of the subject charge sheet and other material. Similarly, giving the same observation, in para no. 77 of the bail order of co-accused Asif Iqbal Tanha, the Hon'ble High Court gave conclusions only with regard to the said accused. Thus, giving opinion specifically about the co-accused persons, the Hon'ble High Court concluded that limitations and restrictions on grant of bail under section 43D(5) of

UA(P)A do not apply. As such it is important to note that the opinion of the Hon'ble High Court is with respect to the co-accused persons only and is not general and therefore, cannot be considered for any other accused including the applicant. Thus, the bar under section 43D(5) of the UA(P)A was lifted by the Hon'ble High Court only with regard to the co-accused persons and not for any other accused including the applicant and this court is still bound by that.

10) It is to be noted that in the case in hand the bail application of the applicant was dismissed by the ld. predecessor vide order dated 16.03.2022 in which he has already concluded that on the perusal of the charge sheet and accompanied documents, for the limited purpose of the bail, in his opinion the allegations against the accused Tasleem Ahmed were prima-facie true. Ld. predecessor, further opined that there were reasonable grounds for believing that the accusations against the accused Tasleem Ahmed, the applicant herein are prima-facie true and hence the embargo created by section 43D of UA(P)A applies for grant of bail to the accused and also the embargo contained in section 437 Cr.P.C.

11) Surprisingly, the said order of the ld. predecessor order has not been challenged by the applicant and this court now cannot review its own order and give any contrary opinion.

12) Keeping in view the facts as discussed above, to the mind of the court, the desired relief cannot be granted to the applicant on the ground of parity with the other co-accused persons.

13) Accordingly, the present application is dismissed.

14) It is made clear that nothing expressed in this order shall be construed as expression of opinion of the court on the merits of the case.

(Sameer Bajpai)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts
Delhi : 22.02.2024