

Court No. - 9

Case :- CRIMINAL APPEAL No. - 134 of 2023

Appellant :- Dheeraj Govind Rao Jagtap

Respondent :- The State Of U.P., Thru. Ats, Gomti Nagar, Lko.

Counsel for Appellant :- Amarjeet Singh Rakhra

Counsel for Respondent :- G.A.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

1. Heard Sri Amarjeet Singh Rakhra, learned counsel for the appellant, Sri S.N. Tilhari, learned A.G.A. for the State and perused the record.

2. The instant appeal under Section 21 (4) of the National Investigation Agency Act, 2008 has been filed by the appellant, Dheeraj Govind Rao Jagtap challenging the order dated 11.04.2022 passed by Additional District and Sessions Judge, Court No.3/Special Judge NIA/ATS, Lucknow in Bail Application No.1043/2022, arising out of Case Crime No.09/2021, under Sections 120-B, 153-A, 153-B, 295A, 417, 298, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, whereby bail application of the appellant was rejected.

3. Learned counsel for the appellant has submitted that initially the first information report came to be lodged against three accused persons and some unknown persons. The present appellant was not named in the first information report. His

further submission is that upon conclusion of the investigation, a police report in the form of charge-sheet has already been filed before the competent court whereupon the cognizance has been taken and charges have been framed against the appellant as well as other co-accused persons and the case is proceeding for trial.

4. It is also argued that the allegations against the appellant relate to carrying out certain activities which according to the prosecution case are anti national. The allegation is to the effect that the appellant has indulged into mass conversion of the people within the State of U.P. from Hindu religion to Islam by making publicity of Islam and thereafter they have been rehabilitated by the appellant. It is also alleged that a huge fund has been generated for executing such activities which is an offence within the scope of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021.

5. Learned counsel for the appellant has submitted that the co-accused, namely, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively.

6. Learned counsel for the appellant has drawn attention of this Court to the fact that while granting bail to co-accused, Abdullah Umar, Hon'ble Supreme Court has been pleased to observe that "having regard to the fact that the charges have been framed, we do not think that the appellant is required to be kept in detention pending trial" and therefore, the case of the appellant is on similar footing as the charges against the present appellant have also been framed.

7. In view of aforesaid, learned counsel for the appellant has vehemently submitted that as the case at hand is situated on similar footing, therefore, the instant criminal appeal deserves to be allowed by setting aside the impugned order dated 11.04.2022 and consequently the appellant may be released on bail.

8. Per contra, learned A.G.A. countered the arguments of the learned counsel for the appellant and argued that the charge sheet has been filed against the appellant after collecting sufficient evidence against him. 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. However, Learned A.G.A. could not dispute the other factual submissions advanced by learned counsel for the appellant including the fact that the co-accused, namely, Irfan Khan @ Irfan Shaikh and Abdullah

Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively. However, it is pointed out by learned A.G.A. that against the order of grant of bail to co-accused, Maulana Kaleem Siddiqui, SLP (Crl.) No.005442 of 2023 filed by the State before Hon'ble Supreme Court is pending.

9. Having heard learned counsel for parties and upon perusal of the records it transpires that initially the first information report came to be lodged against three accused persons and some unknown persons. The present appellant was not named in the first information report. Upon conclusion of the investigation, a police report in the form of charge-sheet has been filed before the competent court, whereupon the cognizance has been taken and charges have been framed against the appellant as well as other co-accused persons and the case is proceeding for trial. The co-accused, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-

accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively.

10. It also transpires that while granting bail to co-accused, Abdullah Umar, Hon'ble Supreme Court has been pleased to observe that "having regard to the fact that the charges have been framed, we do not think that the appellant is required to be kept in detention pending trial" and therefore, the case of the appellant is on similar footing as the charges against the present appellant has also been framed.

11. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 11.04.2022 passed by Additional District and Sessions Judge, Court No.3/Special Judge NIA/ATS, Lucknow in Bail Application No.1043/2022, arising out of Case Crime No.09/2021, under Sections 120-B, 153-A, 153-B, 295A, 417, 298, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, is hereby set aside.

12. Let the appellant/accused- **Dheeraj Govind Rao Jagtap** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each in the like amount to the

satisfaction of the Court concerned with the following conditions:-

(i) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the appellant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause,

then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

13. We further provided that in the event of appellant found engaging himself into promoting any anti-social activities or misusing the liberty of bail or repeating any offence as alleged, it shall be open to the State to file an application for cancellation of bail. Besides the above, the appellant shall mark his presence in the nearby police station in the first week of every month from the date of his release and shall keep the local police apprised about his whereabouts. We also provide that the appellant shall not visit the State of U.P. till the pendency of the proceedings except for attending the trial.

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

(A.K. Srivastava-I, J.)

(A.R. Masoodi, J.)

Order Date :- 19.7.2023

Mahesh

Court No. - 9

Case :- CRIMINAL APPEAL No. - 311 of 2023

Appellant :- Kausar Alam

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lko. And Another

Counsel for Appellant :- Mohammad Aziz Mansuri,Indu Prakash Singh

Counsel for Respondent :- G.A.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Sri Indu Prakash Singh, learned counsel for the appellant, Sri S.N. Tilhari, learned A.G.A. for the State and perused the record.

2. The instant appeal under Section 21 (4) of the National Investigation Agency Act, 2008 has been filed by the appellant, Kausar Alam challenging the order dated 11.04.2022 passed by Additional District and Sessions Judge, Court No.3/Special Judge NIA/ATS, Lucknow in Bail Application No.8691/2021, arising out of Case Crime No.09/2021, under Sections 420, 120-B, 153-A, 153-B, 295A, 511, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, whereby bail application of the appellant was rejected.

3. Learned counsel for the appellant has submitted that initially the first information report came to be lodged against three accused persons and some unknown persons. The present appellant

was not named in the first information report. His further submission is that upon conclusion of the investigation, a police report in the form of charge-sheet has already been filed before the competent court whereupon the cognizance has been taken and charges have been framed against the appellant as well as other co-accused persons and the case is proceeding for trial.

4. It is also argued that the allegations against the appellant relate to carrying out certain activities which according to the prosecution case are anti national. The allegation is to the effect that the appellant has indulged into mass conversion of the people within the State of U.P. from Hindu religion to Islam by making publicity of Islam and thereafter they have been rehabilitated by the appellant. It is also alleged that a huge fund has been generated for executing such activities which is an offence within the scope of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021.

5. Learned counsel for the appellant has submitted that the co-accused, namely, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of

2022 respectively.

6. Learned counsel for the appellant has drawn attention of this Court to the fact that while granting bail to co-accused, Abdullah Umar, Hon'ble Supreme Court has been pleased to observe that "having regard to the fact that the charges have been framed, we do not think that the appellant is required to be kept in detention pending trial" and therefore, the case of the appellant is on similar footing as the charges against the present appellant have also been framed.

7. In view of aforesaid, learned counsel for the appellant has vehemently submitted that as the case at hand is situated on similar footing, therefore, the instant criminal appeal deserves to be allowed by setting aside the impugned order dated 11.04.2022 and consequently the appellant may be released on bail.

8. Per contra, learned A.G.A. countered the arguments of the learned counsel for the appellant and argued that the charge sheet has been filed against the appellant after collecting sufficient evidence against him. 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. However, Learned A.G.A. could not dispute the other factual submissions advanced by learned counsel for the

appellant including the fact that the co-accused, namely, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively. However, it is pointed out by learned A.G.A. that against the order of grant of bail to co-accused, Maulana Kaleem Siddiqui, SLP (Crl.) No.005442 of 2023 filed by the State before Hon'ble Supreme Court is pending.

9. Having heard learned counsel for parties and upon perusal of the records it transpires that initially the first information report came to be lodged against three accused persons and some unknown persons. The present appellant was not named in the first information report. Upon conclusion of the investigation, a police report in the form of charge-sheet has been filed before the competent court, whereupon the cognizance has been taken and charges have been framed against the appellant as well as other co-accused persons and the case is proceeding for trial. The co-accused, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and

04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively.

10. It also transpires that while granting bail to co-accused, Abdullah Umar, Hon'ble Supreme Court has been pleased to observe that "having regard to the fact that the charges have been framed, we do not think that the appellant is required to be kept in detention pending trial" and therefore, the case of the appellant is on similar footing as the charges against the present appellant has also been framed.

11. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 11.04.2022 passed by Additional District and Sessions Judge, Court No.3/Special Judge NIA/ATS, Lucknow in Bail Application No.8691/2021, arising out of Case Crime No.09/2021, under Sections 420, 120-B, 153-A, 153-B, 295A, 511, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, is hereby set aside.

12. Let the appellant/accused- **Kausar Alam** involved in the aforesaid case be released on bail

on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

(i) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the appellant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the

applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

13. We further provided that in the event of appellant found engaging himself into promoting any anti-social activities or misusing the liberty of bail or repeating any offence as alleged, it shall be open to the State to file an application for cancellation of bail. Besides the above, the appellant shall mark his presence in the nearby police station in the first week of every month from the date of his release and shall keep the local police apprised about his whereabouts. We also provide that the appellant shall not visit the State of U.P. till the pendency of the proceedings except for attending the trial.

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

(A.K. Srivastava-I, J.)

(A.R. Masoodi, J.)

Order Date :- 19.7.2023

Mahesh

Court No. - 9

Case :- CRIMINAL APPEAL No. - 987 of 2023

Appellant :- Bhupriya Bando @ Arsalan Mustafa

Respondent :- State Of U.P. Thru. Prin. Secy.
Home Lko. And Another

Counsel for Appellant :- Indu Prakash Singh, Salil
Shekhar Singh

Counsel for Respondent :- G.A.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

1. Heard Sri Indu Prakash Singh, learned counsel for the appellant, Sri S.N. Tilhari, learned A.G.A. for the State and perused the record.

2. The instant appeal under Section 21 (4) of the National Investigation Agency Act, 2008 has been filed by the appellant, Bhupriya Bando @ Arsalan Mustafa challenging the order dated 28.01.2022 passed by Additional District and Sessions Judge, Court No.3/Special Judge NIA/ATS, Lucknow in Bail Application No.9332 of 2021, arising out of Case Crime No.09/2021, under Sections 417, 120-B, 153-A, 153-B, 295A, 298, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, whereby bail application of the appellant was rejected.

3. Learned counsel for the appellant has submitted that initially the first information report came to be lodged against three accused persons and some unknown persons. The present appellant

was not named in the first information report. His further submission is that upon conclusion of the investigation, a police report in the form of charge-sheet has already been filed before the competent court whereupon the cognizance has been taken and charges have been framed against the appellant as well as other co-accused persons and the case is proceeding for trial.

4. It is also argued that the allegations against the appellant relate to carrying out certain activities which according to the prosecution case are anti national. The allegation is to the effect that the appellant has indulged into mass conversion of the people within the State of U.P. from Hindu religion to Islam by making publicity of Islam and thereafter they have been rehabilitated by the appellant. It is also alleged that a huge fund has been generated for executing such activities which is an offence within the scope of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021.

5. Learned counsel for the appellant has submitted that the co-accused, namely, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of

2022 respectively.

6. Learned counsel for the appellant has drawn attention of this Court to the fact that while granting bail to co-accused, Abdullah Umar, Hon'ble Supreme Court has been pleased to observe that "having regard to the fact that the charges have been framed, we do not think that the appellant is required to be kept in detention pending trial" and therefore, the case of the appellant is on similar footing as the charges against the present appellant have also been framed.

7. In view of aforesaid, learned counsel for the appellant has vehemently submitted that as the case at hand is situated on similar footing, therefore, the instant criminal appeal deserves to be allowed by setting aside the impugned order dated 28.01.2022 and consequently, the appellant may be released on bail.

8. Per contra, learned A.G.A. countered the arguments of the learned counsel for the appellant and argued that the charge sheet has been filed against the appellant after collecting sufficient evidence against him. 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. However, Learned A.G.A. could not dispute the other factual submissions advanced by learned counsel for the

appellant including the fact that the co-accused, namely, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively. However, it is pointed out by learned A.G.A. that against the order of grant of bail to co-accused, Maulana Kaleem Siddiqui, SLP (Crl.) No.005442 of 2023 filed by the State before Hon'ble Supreme Court is pending.

9. Having heard learned counsel for parties and upon perusal of the records it transpires that initially the first information report came to be lodged against three accused persons and some unknown persons. The present appellant was not named in the first information report. Upon conclusion of the investigation, a police report in the form of charge-sheet has been filed before the competent court, whereupon the cognizance has been taken and charges have been framed against the appellant as well as other co-accused persons and the case is proceeding for trial. The co-accused, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and

04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively.

10. It also transpires that while granting bail to co-accused, Abdullah Umar, Hon'ble Supreme Court has been pleased to observe that "having regard to the fact that the charges have been framed, we do not think that the appellant is required to be kept in detention pending trial" and therefore, the case of the appellant is on similar footing as the charges against the present appellant has also been framed.

11. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 28.01.2022 passed by Additional District and Sessions Judge, Court No.3/Special Judge NIA/ATS, Lucknow in Bail Application No.9332/2021, arising out of Case Crime No.09/2021, under Sections 417, 120-B, 153-A, 153-B, 295A, 298, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, is hereby set aside.

12. Let the appellant/accused- **Bhupriya Bando @ Arsalan Mustafa** involved in the aforesaid

case be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions:-

(i) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the appellant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If

in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

13. We further provided that in the event of appellant found engaging himself into promoting any anti-social activities or misusing the liberty of bail or repeating any offence as alleged, it shall be open to the State to file an application for cancellation of bail. Besides the above, the appellant shall mark his presence in the nearby police station in the first week of every month from the date of his release and shall keep the local police apprised about his whereabouts. We also provide that the appellant shall not visit the State of U.P. till the pendency of the proceedings except for attending the trial.

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

(A.K. Srivastava-I, J.)

(A.R. Masoodi, J.)

Order Date :- 19.7.2023

Mahesh

Court No. - 9

Case :- CRIMINAL APPEAL No. - 988 of 2023

Appellant :- Adam @ Prasad Rameshwar Kaware

Respondent :- State Of U.P. Thru. Prin. Secy.
Home, Lko. And Another

Counsel for Appellant :- Indu Prakash Singh

Counsel for Respondent :- G.A.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Sri Indu Prakash Singh, learned counsel for the appellant, Sri S.N. Tilhari, learned A.G.A. for the State and perused the record.

2. The instant appeal under Section 21 (4) of the National Investigation Agency Act, 2008 has been filed by the appellant, Adam @ Prasad Rameshwar Kaware challenging the order dated 28.01.2022 passed by Additional District and Sessions Judge, Court No.3/Special Judge NIA/ATS, Lucknow in Bail Application No.9329/2021, arising out of Case Crime No.09/2021, under Sections 417, 120-B, 153-A, 153-B, 295A, 298, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, whereby bail application of the appellant was rejected.

3. Learned counsel for the appellant has submitted that initially the first information report came to be lodged against three accused persons and some unknown persons. The present appellant was not named in the first information report. His

further submission is that upon conclusion of the investigation, a police report in the form of charge-sheet has already been filed before the competent court whereupon the cognizance has been taken and charges have been framed against the appellant as well as other co-accused persons and the case is proceeding for trial.

4. It is also argued that the allegations against the appellant relate to carrying out certain activities which according to the prosecution case are anti national. The allegation is to the effect that the appellant has indulged into mass conversion of the people within the State of U.P. from Hindu religion to Islam by making publicity of Islam and thereafter they have been rehabilitated by the appellant. It is also alleged that a huge fund has been generated for executing such activities which is an offence within the scope of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021.

5. Learned counsel for the appellant has submitted that the co-accused, namely, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively.

6. Learned counsel for the appellant has drawn attention of this Court to the fact that while granting bail to co-accused, Abdullah Umar, Hon'ble Supreme Court has been pleased to observe that "having regard to the fact that the charges have been framed, we do not think that the appellant is required to be kept in detention pending trial" and therefore, the case of the appellant is on similar footing as the charges against the present appellant have also been framed.

7. In view of aforesaid, learned counsel for the appellant has vehemently submitted that as the case at hand is situated on similar footing, therefore, the instant criminal appeal deserves to be allowed by setting aside the impugned order dated 28.01.2022 and consequently the appellant may be released on bail.

8. Per contra, learned A.G.A. countered the arguments of the learned counsel for the appellant and argued that the charge sheet has been filed against the appellant after collecting sufficient evidence against him. 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. However, Learned A.G.A. could not dispute the other factual submissions advanced by learned counsel for the appellant including the fact that the co-accused, namely, Irfan Khan @ Irfan Shaikh and Abdullah

Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively. However, it is pointed out by learned A.G.A. that against the order of grant of bail to co-accused, Maulana Kaleem Siddiqui, SLP (Crl.) No.005442 of 2023 filed by the State before Hon'ble Supreme Court is pending.

9. Having heard learned counsel for parties and upon perusal of the records it transpires that initially the first information report came to be lodged against three accused persons and some unknown persons. The present appellant was not named in the first information report. Upon conclusion of the investigation, a police report in the form of charge-sheet has been filed before the competent court, whereupon the cognizance has been taken and charges have been framed against the appellant as well as other co-accused persons and the case is proceeding for trial. The co-accused, Irfan Khan @ Irfan Shaikh and Abdullah Umar have been granted bail by the Hon'ble Supreme Court vide orders dated 22.2.2023 and 04.07.2023 passed in Criminal Appeal Nos.567 of 2023 and 1737 of 2023 respectively. While co-

accused, namely, Dr. Faraz Shah and Maulana Kaleem Siddiqui have also been granted bail by a Co-ordinate Bench of this Court vide orders dated 2.3.2023 and 05.04.2023 passed in Criminal Appeal Nos.615 of 2022 and 2734 of 2022 respectively.

10. It also transpires that while granting bail to co-accused, Abdullah Umar, Hon'ble Supreme Court has been pleased to observe that "having regard to the fact that the charges have been framed, we do not think that the appellant is required to be kept in detention pending trial" and therefore, the case of the appellant is on similar footing as the charges against the present appellant has also been framed.

11. Accordingly, the appeal is **allowed**. Consequently, the impugned order dated 28.01.2022 passed by Additional District and Sessions Judge, Court No.3/Special Judge NIA/ATS, Lucknow in Bail Application No.9329/2021, arising out of Case Crime No.09/2021, under Sections 417, 120-B, 153-A, 153-B, 295A, 298, 121A, 123 I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, Police Station ATS, Gomti Nagar, District Lucknow, is hereby set aside.

12. Let the appellant/accused- **Adam @ Prasad Rameshwar Kaware** involved in the aforesaid case be released on bail on his furnishing a personal bond and two sureties each in the like

amount to the satisfaction of the Court concerned with the following conditions:-

(i) The appellant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(ii) The appellant shall remain present before the trial court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial court may proceed against him under Section 229-A of the Indian Penal Code.

(iii) In case, the appellant misuses the liberty of bail during trial and in order to secure his presence proclamation under Section 82 Cr.P.C. is issued and the applicant fails to appear before the court on the date fixed in such proclamation, then, the trial court shall initiate proceedings against him, in accordance with law, under Section 174-A of the Indian Penal Code.

(iv) The appellant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the trial court absence of the applicant is deliberate or without sufficient cause, then it shall be open for the trial court to treat

such default as abuse of liberty of bail and proceed against him in accordance with law.

13. We further provided that in the event of appellant found engaging himself into promoting any anti-social activities or misusing the liberty of bail or repeating any offence as alleged, it shall be open to the State to file an application for cancellation of bail. Besides the above, the appellant shall mark his presence in the nearby police station in the first week of every month from the date of his release and shall keep the local police apprised about his whereabouts. We also provide that the appellant shall not visit the State of U.P. till the pendency of the proceedings except for attending the trial.

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

(A.K. Srivastava-I, J.)

(A.R. Masoodi, J.)

Order Date :- 19.7.2023

Mahesh