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(2024) 02 SC CK 0008

Supreme Court Of India

Case No: Criminal Appeal No. 704 Of 2024

Gurwinder Singh		APPELLANT
	Vs	
State Of Punjab & Another		RESPONDENT

Date of Decision: Feb. 7, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 112, 117, 120B, 124A, 153A, 153B,
- Code of Criminal Procedure, 1973 - Section 173, 437(1), 439
- Unlawful Activities (Prevention) Act, 1967 - Section 17, 18, 19, 39, 40, 43D, 43D(5), 43D(6)
- Arms Act, 1959 - Section 25, 54

Citation: M.M. Sundresh, J; Aravind Kumar, J

Bench: Division Bench

Advocate: Satya Mitra, Arvind Kumar Sharma, Karan Sharma

Final Decision: Dismissed

Judgement

Aravind Kumar, J

1. Leave granted.

2. The present appeal impugns the order dated 24.04.2023 passed by the High Court of Punjab and Haryana at Chandigarh in CRA-D No. 144 of

2022 (O&M) whereby the High Court has upheld the order dated 16.12.2021 passed by the Special Judge, NIA Court, SAS Nagar, Mohali in an

application filed under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C) filed by the Appellant herein-Gurwinder Singh along with other

co-accused seeking regular bail in NIA Case RC.19/2020/NIA/DLI, registered under Sections 124A, 153A, 153B, 120-B of the Indian Penal Code,

1860 (IPC), Section(s) 17, 18, 19 of the Unlawful Activities (Prevention) Act, 1967 (UAP Act) and Sections 25 and 54 of the Arms Act, 1959, which

came to be rejected.

3. The factual matrix relevant to dispose the present petition are summarized as under:

3.1 On 19.10.2018, Sh. Varinder Kumar, Inspector, CIA Staff, received secret information that two persons are hanging cloth banners on which

â€œKhalistan Jindabadâ€ and â€œKhalistan Referendum 2020â€, was written, at Pillars Kot Mit Singh Flyover, Amritsar. The Police team

apprehended one Sukhraj Singh @ Raju and Malkeet Singh @ Meetu on the spot and a case was registered vide FIR No.152 dated 19.10.2018 under

section(s) 124A, 153A, 153B and 120B of IPC against both the arrested accused. During the course of Investigation, entire module of the banned

terrorist organization named â€œSikh for Justiceâ€ was busted and other accused persons involved in the said module namely, Bikramjit Singh @

Vicky, Manjit Singh @ Manga, Jatinder Singh @ Goldy, Harpreet Singh @ Happy, Gurwinder Singh @ Gurpreet Singh @ Gopi-the present Appellant,

Harmeet Singh @ Raju, Roofel @ Raful @ Rahul Gill, Sukhmander Singh @ Gopi and Kuldeep Singh @ Kuldip Singh @ Keepa were arrested by

Punjab Police.

3.2 The investigation was completed and final report was presented on 16.04.2019 before the Trial Court against eleven accused persons under

Sections 117, 112, 124A, 153A, 153B, 120-B of IPC, Sections 17, 18, 19 of UAP Act and Section 25 of Arms Act. On further investigation, the police

submitted supplementary reports.

3.3 Due to degree of severity in the charges involved, the investigation in the present matter was transferred to the National Investigation Agency

(NIA), which took over the investigation of this case as per the directions of Government of India, Ministry of Home Affairs issued vide Order

F.No.11011/30/2020/NIA dated 04.04.2020 and registered the original case as RC.19/2020/NIA/DLI dated 05.04.2020. 3rd supplementary

chargesheet was filed by NIA dated 18.12.2020 and Charges were framed by the Learned Special Judge, NIA Punjab on 09.12.2021.

3.4 The investigation revealed that the accused persons received funds through illegal means sent by members of the banned terrorist organization

â€œSikhs For Justiceâ€, those funds were channeled through illegal means such as â€œHawalaâ€ and were sent to be used for furthering separatist

ideology of demanding a separate State for Sikhs popularly called â€œKhalistanâ€, and to carry out terror activities and other preparatory acts i.e.,

attempts to procure weapons to spread terror in India in furtherance of such separatist movement. The investigation further revealed the hand of an

ISI handler named Javed Khan, to be behind the operations of this module busted by Punjab Police and NIA.

3.5 The prima facie involvement of the present Appellant has cropped up in the disclosure statement of the co-accused Bikramjit Singh @ Vicky

(Accused No. 3) recorded on 09.06.2020 while he was in the custody of NIA.

3.6 The said disclosure statement revealed that on 08.07.2018, the Appellant herein-Gurwinder Singh accompanied Bikramjit Singh (Accused No. 3)

and Harpreet Singh @Happy (Accused No.7) to Srinagar in a car where they had planned to purchase a pistol. There they met Sandeep Singh @

Sana and further went to a JK-Li Camp in Srinagar. Sandeep Singh entered the Army camp and after half an hour he came out and stated that pistol

was not available. Then they came back to Gurudwara Sahib, where Sandeep offered them to purchase RDX instead, but they declined and all three

returned back to Punjab, where Bikramjit Singh (Accused No. 3) was dropped off mid-way at Jandialaguru while both, the present Appellant and

Harpreet Singh @ Happy, returned back to their village in Punjab.

3.7 The Appellantâ€™s disclosure statement recorded on 12.06.2020 revealed a similar story as that of Bikramjit Singh. The Appellant stated that he

and Harpreet Singh were childhood friends. In the 1st week of July 2018, Harpreet proposed to visit Srinagar for Religious Service and asked the

Appellant to accompany. The Appellant in his disclosure statement further stated that he initially denied to go with them however later agreed to

accompany them when Harpreet Singh continuously insisted him.

3.8 The trial court vide its order dated 16.12.2023 in CIS No. BA/2445/2021 dismissed the Appellantâ€™s bail application under Section 439 CrPC on

the ground that there were reasonable grounds to believe the accusation against the Appellant to be true. The said order was impugned by way of an

appeal before the High Court of Punjab and Haryana and meanwhile on 10.04.2023, 4th supplementary charge sheet was filed by NIA along with the

List of witnesses and list of documents.

3.9 Vide the Impugned order the High Court rejected the grant of bail to Appellant on the ground of seriousness of the nature of offence and that none

of the protected witnesses had been examined.

SUBMISSION ON BEHALF OF THE PARTIES

4. The Learned Senior Counsel, Mr. Colin Gonsalves, appearing on behalf of the Appellant made the following submissions in support of the

Appellant's bail application:

5. Mr. Gonsalves, learned Senior Counsel contended that the Appellant has been denied bail by the Honâ€™ble High Court and the Ld. Special Judge

by relying upon the disclosure statement of Bikramjit Singh alias Vicky and argued that the said disclosure statement cannot be used to implicate the

present Appellant.

6. Learned Senior Counsel further raised contentions about the lack of scrutiny of the Appellant's mobile phone, marked as M-4 to indicate that the

phone number did not belong to the Appellant. He argued that the absence of incriminating conversations in the Communication Data Records (CDR)

related to the Appellant's phone supports the case for bail. He further contended that the Appellant has been in custody since the last Five years

facing charges of UAP Act which is contrary to the law laid down in KA Najeeb v. Union of India (2021) 3 SCC 713.

7. He further submitted that only 19 out of 106 witnesses have been examined in the last five-year period. He also drew our attention to terror funding

chart to demonstrate that the name of the Appellant does not find place in the same. Mr. Gonsalves also questioned the omission of the alleged main

conspirator, Nihal Singh, as an accused, emphasizing that the Appellant did not procure any weapons.

8. He further sought our attention to the 4th supplementary chargesheet, aimed at establishing a funding link with ISI, to illustrate the Appellant's

exclusion from relevant documentation. Lastly, he stated that out of Nine protected witnesses that have been examined, eight have not mentioned the

name of Appellant. Hence, he prayed to set aside the impugned order and grant bail to the Appellant.

9. Per contra, Mr. Suryaprakash V. Raju, learned Additional Solicitor General, on behalf of the Respondent, submitted that there is sufficient evidence

on record to prove the incriminating role of the Appellant and the same is revealed by the statements of Protected witnesses.

10. He further submitted that the Appellant-accused along with co-accused Bikarmjit Singh @ Vicky (Accused No. 3) were involved in the activities

of â€œSikhs for Justiceâ€, a banded terrorist organisation, whose chief proponent is Gurpatwant Singh Pannu (Accused No. 12) and Bikramjit Singh

@ Vicky (Accused No. 3) had asked their known persons to arrange weapons from Kashmir. In furtherance of their activities to procure arms and

ammunition, the Appellant-accused along with co-accused Bikarmjit Singh @ Vicky and Harpreet Singh @ Happy (Accused No. 7) had visited

Srinagar.

11. He further submitted that Appellant in his voluntary disclosure statement admitted that on gaining knowledge of purpose of visit to Srinagar, he

voluntarily continued the journey. In fact, the Appellant suggested an alternative to the co-accused and advised them to procure the weapon from

Western Uttar Pradesh.

12. Further, he submitted that the provisions of section 43D(5) of Unlawful Activities (Prevention) Act, 1967 are completely applicable in this case and

as such the High court has rightly denied bail to the Appellant-accused.

13. He also contended that the case is presently under trial and so far 22 witnesses have been examined. The accused is facing charges of grave

nature pertaining to crimes that are not attributable to an individual but members of a terrorist gang operating at the behest of Gurpatwant Singh Pannu

(Accused No. 12), a proscribed terrorist. If the Appellant is released on bail, there is every likelihood that he will influence the key witnesses of the

case hampering the process of justice. Hence, he prayed that the bail petition should be rejected.

DISCUSSION AND CONCLUSION

14. We have heard the learned counsel on behalf of both the parties and have perused the records of the case. The present case involves the charges

under the UAP Act along with other charges under the IPC and Arms Act therefore, it is apt to consider the bail provision envisaged under section

43D of the UAP Act before we delve to analyze the facts.

Bail under UAP Act: Section 43D (5)

15. In the course of oral argument, both sides have laid great emphasis on the interpretation of section 43D(5) of the 1967 Act. We will begin our

analysis with a discussion on the scope and limitations of bail under Section 43D(5) UAP Act.

We shall extract Section 43D(5) for easy reference:

Section 43D - Modified application of certain provisions of the Code

(1).....

.....

(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.

(6) The restrictions on granting of bail specified in sub-section

(5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in Sub-sections (5) and

(6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the

country unauthorizedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

16. The source of the power to grant bail in respect of non-bailable offences punishable with death or life imprisonment emanates from Section 439

CrPC. It can be noticed that Section 43D(5) of the UAP Act modifies the application of the general bail provisions in respect of offences punishable

under Chapter IV and Chapter VI of the UAP Act.

17. A bare reading of Sub-section (5) of Section 43D shows that apart from the fact that Sub-section (5) bars a Special Court from releasing an

accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the

proviso to Sub-section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail. It lays down that

if the Court, â€˜on perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedureâ€™, is of the opinion that there

are reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or

Chapter VI of the UAP Act is prima facie true, such accused person shall not be released on bail or on his own bond. It is interesting to note that

there is no analogous provision traceable in any other statute to the one found in Section 43D(5) of the UAP Act. In that sense, the language of bail

limitation adopted therein remains unique to the UAP Act.

18. The conventional idea in bail jurisprudence vis-Ã -vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted

phrase - â€˜bail is the rule, jail is the exceptionâ€™ â€" unless circumstances justify otherwise - does not find any place while dealing with bail

applications under UAP Act. The â€˜exerciseâ€™ 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)â€" â€˜shall not be releasedâ€™ in contrast with the form of the words as found in Section 437(1) CrPC

- â€˜may be releasedâ€™ â€" 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 â€˜justificationsâ€™ must be searched from the case diary and the final report submitted before

the Special Court. The legislature has prescribed a low, â€˜prima facieâ€™ 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 â€˜strong suspicionâ€™, which is

used by Courts while hearing applications for â€˜dischargeâ€™. In fact, the Supreme Court in Zahoor Ali Watali (2019) 5 SCC 1 has noticed this

difference, where it said:

â€œIn 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.â€■

20. In this background, the test for rejection of bail is quite plain. Bail must be rejected as a â€˜ruleâ€™, 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 â€" that the Courts would proceed to decide the bail application in accordance

with the â€˜tripod testâ€™ (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 â€˜accusationsâ€™ 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 (â€˜tripod

testâ€™)?

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 â€˜second testâ€™ of the inquiry will not arise if the â€˜first testâ€™ 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

â€˜tripod testâ€™.

Test for Rejection of Bail: Guidelines as laid down by Supreme Court in Wataliâ€™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 Wataliâ€™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:

â€¢ Meaning of â€˜Prima facie trueâ€™ [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.

â€¢ Degree of Satisfaction at Pre-Chargesheet, Post Chargesheet and Post-Charges â€" Compared [para 23]O: nce 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.

â€¢ 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.

â€¢ Record a finding on broad probabilities, not based on proof beyond doubt [para 24]: â€œThe 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.â€■

â€¢ 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.

â€¢ Material on record must be analysed as a â€˜wholeâ€™; 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.

â€¢ 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.

â€¢ 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 evidenceâ€¦â€¦.In any case, the question of discarding the document at this stage, on the ground of being

inadmissible in evidence, is not permissible.

24. It will also be apposite at this juncture to refer to the directions issued in Devender Gupta v. National Investigating Agency 2014 (2) ALD Cri. 251

wherein a Division Bench of the High Court of Andhra Pradesh strove to strike a balance between the mandate under Section 43D on one hand and

the rights of the accused on the other. It was held as follows:

The following instances or circumstances, in our view, would provide adequate guidance for the Court to form an opinion, as to whether

the accusation in such cases is ""prima facie true"":

1) Whether the accused is/are associated with any organization, which is prohibited through an order passed under the provisions of the

act;

2) Whether the accused was convicted of the offenses involving such crimes, or terrorist activities, or though acquitted on technical

grounds; was held to be associated with terrorist activities;

3) Whether any explosive material, of the category used in the commission of the crime, which gave rise to the prosecution; was recovered

from, or at the instance of the accused;

4) Whether any eye witness or a mechanical device, such as CC camera, had indicated the involvement, or presence of the accused, at or

around the scene of occurrence; and

5) Whether the accused was/were arrested, soon after the occurrence, on the basis of the information, or clues available with the

enforcement or investigating agencies.

25. In the case of Kekhriesatuo Tep and Ors. v. National Investigation Agency (2023) 6 SCC 58 the Two-Judge Bench (Justice B.R. Gavai & Justice

Sanjay Karol) while dealing with the bail application for the offence of supporting and raising funds for terrorist organization under section 39 and 40

of the UAP Act relied upon NIA v. Zahoor Ahmad Shah Watali (2019) 5 SCC 1 and observed that:

â€œwhile dealing with the bail petition filed by the accused against whom offences under chapter IV and VI of UAPA have been made, the

court has to consider as to whether there are reasonable grounds for believing that the accusation against the accused is prima facie true.

The bench also observed that distinction between the words â€œnot guiltyâ€ as used in TADA, MCOCA and NDPS Act as against the words

â€œprima facieâ€ in the UAPA as held in Wataliâ€™s Case (supra) to state that a degree of satisfaction required in the case of â€œnot

guiltyâ€■ is much stronger than the satisfaction required in a case where the words used are â€œprima facieâ€■

26. In the case of Sudesh Kedia v. Union of India (2021) 4 SCC 704 the Bench of Justice Nageswara Rao and Justice S. Ravindra Bhat while dealing

with a bail application for the offence u/s. 17, 18 and 21 of the UAP Act relied upon the principle propounded in Wataliâ€™s case (supra) and

observed that:

â€œthe expression â€œprima facieâ€ would mean that the materials/evidence collated by the investigating agency in reference to the accusation

against the accused concerned must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows that

complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of

facts constituting the stated offence, unless rebutted or contradicted.â€■

27. In the light of these guiding principles, we shall now proceed to decide whether the additional limitations found in Section 43D(5) UAP Act are

attracted in the facts of the present case. In other words, we shall inquire if the first test (as set out above), i.e., test for rejection of bail, is satisfied.

For this purpose, it will, firstly, have to be examined whether the allegations/accusations against the Appellants contained in charge-sheet documents

and case diary, prima facie, disclose the commission of an offence Section 17,18 and 19 of the UAP Act.

Section 17 of the UAP Act states:

17. Punishment for raising funds for terrorist act. â€"Whoever, in India or in a foreign country, directly or indirectly, raises or collects

funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely

to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for

commission of such 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.

Section 18 of the UAP Act states:

18. Punishment for conspiracy, etc.â€"Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directly 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.

Section 19 of the UAP Act states:

19. Punishment for harbouring, etc.â€"Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing

that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may

extend to imprisonment for life, and shall also be liable to fine: Provided that this section shall not apply to any case in which the harbour

or concealment is by the spouse of the offender.â€■

28. Having examined the provisions of law, let us now consider the material available on record to ascertain whether the case of the Appellant

satisfies the tests as mentioned herein above.

29. The Appellant's counsel contended that the Appellant's mobile phone has not undergone scrutiny, and therefore, no conclusive connection to the

charged offenses could be established. However, the scrutiny report of Bikramjit Singh @ Vickyâ€™s (Accused No. 3) mobile phone, marked as M-

5 reveals at serial no. 10, that the present Appellant was in communication with Accused No.3 multiple times. The Call Detail Records (CDRs)

unveils a consistent pattern of communication between the Appellant and Bikramjit Singh (Accused No.3) even prior to their trip to Srinagar for

procurement of weapons. Detailed scrutiny of the CDRs indicates that the Appellant had engaged in communication with Bikramjit Singh (Accused

No.3) approximately 26 times, spanning from June 22, 2018 to October 19, 2018, the day of his arrest.

30. The Appellantâ€™s counsel has objected to the denial of bail by the High Court and Special Court upon relying on the disclosure statements of

Bikarmjit Singh @ Vicky (Accused No.3) and the Appellant himself. Accused No.3 in his disclosure statement (Annexure P3) has stated that on

08.07.2018, he along with Harpreet Singh @ Happy and Gurwinder Singh @ Gurpreet Singh Gopi (the present Appellant) went to Srinagar for the

purchase of pistol which was sought to be used by them to take revenge of the Sacrilege of Guru Granth Sahib. Further, the disclosure Statement of

the present Appellant (Annexure P4) corroborated the disclosure Statement of Accused No.3 wherein he stated that he went with Accused No.3 and

Harpreet Singh @ Happy to Srinagar. Though the present Appellant has taken the stance of not knowing the purpose of the visit to Srinagar, in his

disclosure statement, he has admitted to the fact that he suggested both Bikramjit Singh (Accused No.3) and Harpreet Singh (Accused No.7) to

purchase the weapon from western Uttar Pradesh.

31. The Appellantâ€™s counsel has stated that in the terror funding chart the name of the Appellant does not find place. It is pertinent to mention that

the charges in the present case reveals the involvement of a terrorist gang which includes different members recruited for multiple roles. Hence, the

mere fact that the accused has not received any funds or nothing incriminating was recovered from his mobile phone does not absolve him of his role

in the instant crime.

32. The Appellantâ€™s counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five

years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In

KA Najeebâ€™s case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already

undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this courtâ€™s decision to consider bail was grounded in

the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already

served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in

KA Najeebâ€™s case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in

2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said

accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already

under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates

the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large

quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there

is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice. Therefore, mere delay in trial

pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf

the appellant cannot be accepted.

33. Hence, we are of the considered view that the material on record prima facie indicates the complicity of the accused as a part of the conspiracy

since he was knowingly facilitating the commission of a preparatory act towards the commission of terrorist act under section 18 of the UAP Act.

34. For the aforementioned reasons the bail application of the Appellant is rejected and consequently the appeal fails. Needless to say, that any

observation made hereinabove is only for the purpose of deciding the present bail application and the same shall not be construed as an expression on

the merits of the matter before the trial court.