

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

(THROUGH VIRTUAL MODE)

**Reserved on: 25.03.2025
Pronounced on: 03.04.2025**

Cr1A(D) No. 1/2025

Javaid Ahmad Bhat, aged 41 years
S/O Abdul Majeed Bhat
R/O Kohnkhan, Dalgate Srinagar
Through his father
Abdul Majeed Bhat

.....Petitioner(s)

Through: Mr. Azhar-ul-Amin, Advocate.

Vs

Union Territory of Jammu and Kashmir,
Through SHO Police Station Khanyar.

..... Respondent(s)

Through: Mr. Mohsin S. Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE**

JUDGMENT

(PER: CHOWDHARY-J)

01. The instant appeal has been filed by the appellant-Javaid Ahmad Bhat through his father Abdul Majeed Bhat, under Section 21 of the National Investigation Agency Act, 2008 read with Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, for setting-aside the order of rejection of bail dated 19.12.2024 passed by the Court of learned Additional Sessions Judge, Special Judge

(Designated under NIA Act), Srinagar (**'NIA Court'** for short) in FIR No. 19 of 2022 under Sections 13,18,19,39 of the Unlawful Activities (Prevention) Act, 1967 (for short, **'UAP Act'**) registered at Police Station, Khanyar in case titled **"Javid Ahmad Bhat Vs. Union Territory of J&K"** with a further prayer that the appellant be released on bail.

- 02.** The appellant has challenged the impugned order on the grounds that there is no material to give rise to the belief that accusations against the appellant are prima facie true and the evidence against the appellant is only circumstantial; that the appellant has been sought to be implicated in the case based on his own self-incriminating statement recorded in police custody before the Executive Magistrate regarding 'knowledge' and the foundational circumstance of 'knowledge' is not substantiated by any other evidence, be it ocular, documentary or electronic; that no reasonable foundation is available for the court to believe that accusations against the appellant are prima facie true; that rigour of section 43-D (5) of the UAP Act is not at all attracted in the case; that the order of rejection of bail suffers from the patent illegality, so much so, that the cardinal principle of criminal law is that benefit of doubt always goes to the accused but the trial court, while rejecting bail, has not given this benefit to the appellant; that the trial court has not appreciated the fact that the accused No. 4-Kaleem Zaffar, who provided Aadhar Cards and faked the identity of foreign terrorists, is already

granted bail by the Court. Lastly, it has been prayed that the order of rejection of bail of the appellant be set aside and the appellant be released on bail.

- 03.** Learned counsel for the appellant, in line with the memo of appeal, argued that the prolonged incarceration of the appellant, who is languishing in jail for the last two years, amounts to the pre-trial conviction and deprivation of his liberty as in the facts and circumstances of the case, no reasonable foundation is available for the trial court to believe that accusations against the appellant are prima facie true as such, the rejection of bail of the appellant is antithetical to Article 21 of the Constitution of India; that the rigour of section 43-D (5) of the UAP Act is not at all attracted in the case; that the trial court has applied strict burden in framing opinion that the appellant is prima facie guilty; that the order of rejection of bail suffers from the patent illegality so much so that the cardinal principle of criminal law is that benefit of doubt always goes to the accused and the trial court, while rejecting the bail of the appellant, has not given this benefit to the appellant; that the only reason foisted by the trial court for rejection of bail of the appellant is the ground of severity of allegations and the risk posed by the appellant's release.
- 04.** He has further argued that the prosecution has cited 36 witnesses, out of which only 10 witnesses have been examined and none of the said 10 witnesses have deposed

anything averse against the appellant; that the appellant has been behind the bars for the last two years, as such he is entitled to be released on bail. Lastly, he has argued that the order of rejection of bail of the appellant be set aside and the appellant be released on bail.

- 05.** Learned counsel for the respondent, ex adverso, vehemently argued that the appellant-accused had been charged for having conspired and abetted the commission of terrorist acts, who has harboured two foreign terrorists initially for a period of twelve days in his hotel and then in his house and in this period, two foreign terrorists were abetted to stay concealing their identity and one of the foreign terrorists was also provided with a fake aadhar card by one of the employees of the appellant-accused and those two foreign terrorists were later neutralized in an encounter; that during the period of their stay in the properties of the appellant-accused which they used as hideouts, the said two foreign terrorists had committed an act of terror wherein they had killed two CRPF personnel in the heart of city at Maisuma and that the appellant-accused had actively participated in the conspiracy and harbouring the terrorists to carry on terrorist acts to further the designs of a terrorist organization, as such, the appellant-accused is liable to be awarded with life imprisonment and the appellant accused had failed to show any reason that no 'prima facie' case is made out against him so as to escape the rigour of sub-section 5 of Section 43-D of the UAP Act

for grant of bail especially when he has been chargesheeted for the commission of the offences he was charged by the prosecution agency.

- 06.** Learned counsel for the respondent further argued that in case the appellant-accused is admitted to bail at this stage, when most of the prosecution witnesses are yet to be examined, there is a strong apprehension that given to his clout, he may try to win-over the witnesses by exerting influence and there is also likelihood that he may abscond and may not face the trial in view of the severity of punishment in case of conviction. He has finally argued that the trial court has decided the bail application moved by the appellant-accused touching all the aspects raised by him perfectly in consonance with law and the impugned order refusing grant of bail to the appellant-accused does not warrant any interference by this court, invoking appellate jurisdiction and prayed that the appeal be rejected.
- 07.** Heard learned counsel for the parties and perused the record.
- 08.** The appellant-Javaid Ahmad Bhat, had filed an application, before the NIA Court, on the ground that in view of the investigation already having been completed, he was no more required for investigation and not admitting to bail shall amount to pre-trial punishment to the appellant, which is against the principle of concept of liberty in terms

of Article 21 of the Constitution; that the accused persons are presumed to be innocent till the guilt is proved beyond reasonable doubt and cannot be deprived of their personal liberty when there is nothing on record, which can connect them to the commission of any sort of crime; that the purpose of bail is not to exonerate the accused of their charges but is merely shifting of custody of sureties, who undertake their presence; that bail is the rule and jail is exception; that the offences alleged against the appellant do not carry punishment of death or life imprisonment, as such, there was no justification to keep the appellant in custody.

- 09.** The prosecution had filed objections to the application filed by the appellant before the court below asserting that out of 36 prosecution witnesses, 10 prosecution witnesses have been examined and the report submitted by the Investigating Agency is suggestive of the fact that the appellant is involved in the commission of offences punishable under sections. 307 IPC, 7/27 Arms Act, 16, 18, 19, 20, 39 UAP Act; that the offences punishable under these sections of law carry imprisonment for life and the rigour of Section 43(D) of UAP Act also bars the jurisdiction of trial court to grant bail if the accused is 'prime facie' found involved in commission of such offences; that the appellant was involved in serious offences, which impinges upon the peace and security of the State and society in general and the prosecution has reasonable apprehension

that in case the bail application is allowed, the appellant may jump over the bail and turn absconder; that on drawing a balance sheet of aggravating and mitigating factors of the case i.e., involvement of the appellant in the commission of aforesaid crime, one will come to an irresistible conclusion that case in question is full of aggravating factors, as such, motion for grant of bail in favour of the appellant deserves to be rejected as it is incumbent upon the court to strike a balance between the individual and public interest and wherever they may get pitted against one another, former must give way to the later.

- 10.** The facts gathered from the trial court record are that on 10.04.2022 at about 1100 hrs, Khanyar police received information through reliable sources about the presence of two foreign terrorists in the Bishember Nagar, Khanyar area, as a result whereof the local police along with CRPF and security forces launched cordon/search operation and the terrorists, who were hiding in the house of one Javid Ahmed Bhat S/O Abdul Majeed R/O Konkhan-**the appellant herein**, on seeing the search party, opened indiscriminate firing upon the security forces resulting to which, some police and CRPF personnel got injured; that the firing was retaliated by security forces turning into an encounter and the holed up terrorists were gunned down and consequent to this a case was registered vide FIR No. 19/2022 under Sections 307 IPC, 7/27 Arms Act and 13,

16, 18, 19, 20, 39 UAP Act at Police Station, Khanyar; that during investigation, statements of the witnesses recorded, recoveries and seizures made, disclosures recorded and other technical data analysis collected which established that the two foreign terrorists, who had illegally infiltrated in J&K on the directions of PAK based handler Mubashir Hamza, were later transported into Srinagar city to carry out terrorist activities; that Mubashir Hamza who was in fact Mubashir Ahmad Dar @ Hamza S/O Ghulam Nabi Dar R/O Syedabad Tral, is believed to have exfiltrated to Pakistan in the year 2018 and associated with LeT terrorist outfit there and he motivated two accused, namely, Bilal Ahmad Dagga and Ashiq Bashir Najar to transport and accommodate the two foreign terrorists in Srinagar city; that both the foreign terrorists were transported from Parimpora in the month of December, 2021 to Soiteng area of Srinagar city wherefrom they contacted Hamza and then went to the shop of Ashiq Bashir Najar, who was made to speak to Hamza through their mobile phone and on the directions of PAK based handler Hamza, the said Ashiq Bashir Najar accommodated the two foreign terrorists in a nearly abandoned house for about 12 days, providing them food and other daily needs during this period; that thereafter these two foreign terrorists were again received by Bilal Ahmad Dagga from the above area of Srinagar and got them accommodated in Khayam area of Srinagar through his acquaintance Sabreena in a hotel run by one

Javid Ahmad Bhat-appellant herein where they stayed for around 12 days, however, later the appellant shifted them to his home located at Bishambar Nagar on the instructions of Bilal Ahmad Dagga as they felt it safer; that the appellant initially did not have knowledge of the two foreigners as terrorists, however, in due course of time, he learnt about it and was motivated by Bilal to work in league with him; that as per the chargesheet, these two foreign terrorists with the assistance of two local accused carried out a terrorist attack on CRPF personnel deployed in Maisuma area on 04.04.2022 in which two CRPF personnel got martyred.

- 11.** It is the prosecution case that the appellant Javid Ahmed Bhat had accommodated the foreign terrorists initially in his hotel and then in his house and also arranged sim card for them, besides accommodated them in Padshahibagh and used to meet them in Bishambar Nagar area occasionally to discuss and plan their movement and other terrorist activities. The police concluded the investigation establishing that all the accused persons including the appellant conspired with each other to wage war against the Govt. of India by receiving, transporting, concealing, harboring and by extending all physical and communicational logistics to the freshly infiltrated Pakistani terrorists of proscribed terror organization "Lashker-e-Toiba" with the aim and motive to spread terror by way of carrying out terror attacks on the security forces and on the persons working in the security grid in J&K in

particular and based on the investigation, the chargesheet was concluded against the appellant for the commission of offences punishable under sections 13, 18, 19 & 39 of UAP Act as he was alleged to have voluntarily provided accommodation to the two alleged slain militants in his hotel (Section 19 of UAP Act) and asked one of his employees (Saqib) to provide a SIM card to one of the two alleged slain militants for use (Section 18 of UAP Act).

- 12.** The court below, vide impugned order, has discussed all important aspects on the case and rejected the bail application moved by the appellant herein.
- 13.** The contention of the learned counsel for the appellant that the learned NIA court has not appreciated the submission made with regard to the fact that the appellant not to have committed any offence punishable under the Chapters of IV and VI of UAP Act as no such offences are made out on the basis of the evidence collected by the prosecution, seems to be untenable in law in view of the fact that the trial court has framed charges for the trial of the appellant for the commission of the aforementioned offences and to a pointed question to the learned senior counsel appearing for the appellant that whether the order framing charge has been assailed or not, the answer was replied in negative and that the appellant has been facing trial of his case wherein out of 36 witnesses, 10 prosecution witnesses are stated to have been examined.

14. The appellant-accused has been charged for the commission of offences punishable under Sections 13, 18, 19 and 39 of the UAP Act. Section 13 (**Punishment for unlawful activities**) provides for a punishment for unlawful activities and is punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine. Section 18 (**Punishment for conspiracy**) provides that whoever conspires or attempts to commit or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine. Section 19 (**Punishment for harbouring**) provides that 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. It is to be noted that both these offences under sections 18 and 19 of UAP Act fall under Chapter IV of the UAP Act.
15. Section 39 (**Offence relating to support given to a terrorist organization**) of the UAP Act provides that whoever commits the offence relating to support given to a terrorist organization shall be punishable with

imprisonment for a term not exceeding 10 years or with fine or with both. It is not out of place to mention that the offence punishable under section 39 of the UAP Act is a part of Chapter VI of the UAP Act.

- 16.** Sub-section 5 of section 43(D) of the UAP Act creates a rigour to the grant of bail to an accused, who is alleged to have committed offence punishable under Chapter IV and VI of the UAP Act. It will be profitable to extract the relevant part of the said Section as under:

“43(D) (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.”

- 17.** Having regard to the aforesaid provision contained in sub-section 5 of Section 43(D) of UAP Act, the contention raised by the learned counsel for the appellant-accused that the rigour of section is not attracted pales into insignificance as the appellant accused is stated to have been charged for the commission of offences punishable under Sections 18 and

19 falling under Chapter IV and Section 39 falling under Chapter VI of the UAP Act.

- 18.** The trial court while considering the application for grant of bail and so this appellate court while hearing the appeal against the rejection of bail cannot go into the intricate questions of whether the offences are made out or not as the evidence cannot be appreciated so minutely at the stage of consideration of bail, which is expected to be considered at the trial stage.
- 19.** It appears that the learned judge presiding over the NIA Court has discussed all the points raised by the appellant before the trial court and the point wise determination has been given with elaborate discussion on each and every point raised.
- 20.** This court, after hearing both the sides, perusal of chargesheet and other incriminating material, while exercising appellate jurisdiction, does not find any illegality or perversity in the impugned order, which is, thus, upheld, as a result the appeal fails and is, accordingly dismissed.

(M A CHOWDHARY)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE

JAMMU
03.04.2025
Naresh/Secy

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**

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