

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 212 of 2021

Surojit Mandal

-Vs-

National Investigation Agency (NIA)

For the Appellant : Mr. Debasis Kar, Advocate,
Mr. Husen Mustafi, Advocate.

For the NIA : Mr. Sanjay Bardhan, Advocate,
Mr. Bhaskar Prasad Banerjee, Advocate,
Mr. Debasish Tandon, Advocate.

Heard on : February 04, 2022.

Judgment on : February 04, 2022.

Joymalya Bagchi, J. :-

The appeal is directed against the order dated 26.03.2021 passed by the learned Chief Judge, City Sessions Court, Calcutta in connection with N.I.A. 01 of 2020 dated 04.03.2020 under Sections 120B/489B/489C of the Indian Penal Code and under Sections 16, 18 and 20 of The Unlawful Activities (Prevention) Act, 1967 rejecting the prayer for bail of the appellant in connection with the present case.

The prosecution case, as levelled against the appellant is to the effect that the appellant had been financing, aiding and abetting the circulation of high quality counterfeit currency notes in conspiracy with co-accused persons viz., Senaul Sk. @ Senaul, A-1, Akramul, A-2 and Enamul Hoque, A-3. On 21st January, 2020, high quality FICNs valued at Rs.2,46,000/- and Rs.1,00,000/- were seized from A-1 and A-2 respectively. On 1st February, 2020 pursuant to the leading statement of A-1, another consignment of high quality FICNs were seized from Enamul Hoque, A-3. Investigation into the crime disclosed active telephonic communication between the appellant, A-1 and A-2 on and from December, 2019. In fact, on the day prior to the apprehension of A-1 and A-2, there were telephonic conversations between the appellant and the accused persons. A sum of Rs.1,38,000/- was also transferred from the account of the appellant and his sister-in-law to the account of A-2 on 16.1.2020 and 17.1.2020 – couple of days prior to recovery of the FICNs. Statement of protected witness also corroborates the monetary transactions for purchase of FICNs by the appellant. Appellant was arrested on 30th January, 2021 and is in custody for more than a year.

Learned Advocate appearing for the appellant argues that the ingredients of the offences under Sections 16, 18 and 20 of The Unlawful Activities (Prevention) Act, 1967 are not disclosed in the instant case. No high quality FICNs were seized from his possession. He was belatedly arrested on the basis of flimsy and legally inadmissible evidence. He, accordingly, submits that the statutory presumption under Section

43-D(5) of The Unlawful Activities (Prevention) Act, 1967 is attracted in the instant case.

Mr. Bardhan along with Mr. Banerjee and Mr. Tandon appearing for NIA argues that the analyses of the digital data in the mobile phones, sim cards and the bank transactions amongst the accuseds show that the appellant was one of the principal conspirators who was financing the circulation of high quality FICNs. Immediately prior to apprehension of A-1 and A-2 with high quality FICNs above Rs.3,46,000/- in all, appellant was in active telephonic conversations with them and had transferred a sum of Rs.1,38,000/- to A-2 through his own account and that of one of his relation. Statement of protected witnesses corroborates such fact. Prima facie materials on record disclose ingredients of the offence under The Unlawful Activities (Prevention) Act, 1967 and the prayer for bail of the appellant was rightly rejected.

Having considered the materials on record in the light of the rival submissions of the parties, we note that the investigating agency had apprehended A-1 and A-2 on 21st January, 2020 with high quality FICNs valued at Rs.2,46,000/- and Rs.1,00,000/- respectively. Subsequently, another consignment of high quality of FICNs valued at Rs.5,00,000/- was recovered from A-3. Further investigation in the matter including the analyses of digital data from the mobile phones and the sim cards of the appellant and the other accused persons revealed that the appellant was in active communication with A-1 and A-2 from December, 2019. Even on 20th January, 2020, a day prior to their apprehension, there

were telephonic conversations between the appellant, A-1 and A-2. On 16th and 17th January, 2020 i.e. 4-5 days prior to their apprehension, a sum of Rs.1,38,000/- had been transferred at the behest of the appellant through his own account and that of his sister-in-law. No explanation is forthcoming from the appellant with regard to the frequent telephonic conversations between himself, A-1 and A-2 as well as the aforesaid monetary transactions soon before the apprehension of the co-accused persons with a large volume of FICNs. These materials prima facie give rise to a strong suspicion that the appellant playing an active role in the circulation of high quality of FICNs through other accused persons.

Under such circumstances, we are of the opinion that the prima facie role of the appellant in the alleged crime is disclosed and the rejection of the prayer for bail by the court below is justified.

Accordingly, the appeal is dismissed.

We note that 22nd February, 2022 has been fixed for consideration of charge. As the appellant is already in custody for more than a year, we request the trial court to take prompt steps for consideration of framing of charge at the earliest preferably within two months from the next date fixed before the said Court and upon the charge being framed, to take the proceeding to its logical conclusion without unnecessary delay.

Before parting we are constrained to observe perusal of the records of the case particularly the statement of the protected witness recorded under section 164 Cr.P.C unfortunately discloses his identity. Sub-

section (3) of section 44 of the Unlawful Activities (Prevention) Act, 1967, inter alia, provides the measures which the court may undertake to protect the identity of a protected witness which includes avoiding to mention the name and address of the witness in its orders or judgment and any record of the case accessible to public. Statement under section 164 Cr.P.C. of the witness is required to be served upon the accused. Hence, disclosure of identity of the protected witness in such statement clearly defeats the purpose of the aforesaid provision of law. Hence, the trial court is directed to redact the name, address and other particulars of the protected witness from the aforesaid statement and other records immediately. Trial Court is further directed to be more cautious in future and ensure that the identity of the protected witnesses are not divulged.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the parties upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)