

\$~2 & 3

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 3909/2021

MOTI LAL BASAK Petitioner

Represented by: Ms. Sonam Chauhan, Mr. Sujeet
Kumar Mishra, Advs.

versus

STATE OF NCT OF DELHI Respondent

Represented by: Mr. Laksh Khanna, APP for State
with Insp. Anuj Kumar, PS Spl. Cell.

+ BAIL APPLN. 1724/2022

VIKAS KUMAR SHARMA @ LADDI Petitioner

Represented by: Mr. Sidharth Yadav, Adv.

versus

STATE Respondent

Represented by: Mr. Laksh Khanna, APP for State
with Insp. Anuj Kumar, PS Spl. Cell.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

ORDER

% **17.02.2023**

CRL.M.A. 16604/2022 in BAIL APPLN. 1724/2022

1. Additional documents are taken on record.

2. Application is disposed of.

BAIL APPLN. 3909/2021 & BAIL APPLN. 1724/2022

1. By these bail applications the two petitioners seek regular bail in case
FIR No. 37/2016 registered at PS Special Cell, New Delhi on 19th June,

2016 under Section 489(B) & 489(C) IPC read with 120B IPC and Section 15 (1) (a) (iii a) of UAPA.

2. Mr. Sidharth Yadav, learned counsel for the petitioner Vikas Kumar Sharma contends that the two petitioners have been in custody since 19th June, 2016 and till date the trial has not concluded. Out of the 24 witnesses cited by the prosecution only 16 have been examined. FIR is based on an interceptive conversation between one Manga Singh with Baljinder Singh and Vishnu. The said Vishnu has not been apprehended till date and Baljinder and Manga despite being in custody in other matters, a supplementary charge-sheet has been filed against them only on 22nd April, 2022 without arresting them and in view of the fact that now two accused have been added the 16 witnesses already examined will have to be recalled for cross-examination and the trial is thus likely to take a long time.

3. It is further contended that even as per the case of prosecution taking on the face of it, the petitioners would at best be carriers whereas the main accused would be Baljinder, Manga and Vishnu of which Vishnu has not been arrested till date and qua Baljinder and Manga the charge-sheet has not been filed for offence punishable under Section 15 (1) (a) (iii a) of UAPA. Learned counsel further contends that one Sanaullah is also stated to be an accused as per the charge-sheet, who has not been arrested till date. He further states that since the provision of UAPA have not been invoked against Baljinder and Manga, the main accused in the charge-sheet, and even in the charge framed against Baljinder and Manga, charge for Section 15 (1) (a) (iii a) of UAPA has not been framed against these two persons, hence the charge for offences punishable under Section 15 (1) (a) (iii a) UAPA could not have been invoked against the petitioners as well. He

further states that in any case the minimum sentence prescribed under Section 16 for an offence of this nature would be 5 years punishable upto life and since provisions of UAPA have not been invoked against the main accused, the petitioners even if convicted are not likely to be awarded life imprisonment. Learned counsel further states that the petitioners will be available for trial, which is likely to take some time and they be released on regular bail pending completion of trial.

4. Learned counsel for the petitioner/ Vikas Kumar Sharma further states that the appellant had challenged the order framing charge in CRL.REV.P. 435/2019. Since by then 12 out of 24 witnesses had already been examined, this Court on 4th January, 2022 directed that the trial should be concluded within a period of 12 months from 5th May, 2022 and permitted the petitioners to withdraw the revision petition. It is stated that despite 8 months having passed, only 2 more prosecution witnesses have been examined. He further states that in the two supplementary charge-sheets 10 more witnesses have been cited, thus witnesses now to be examined would be 34.

5. Learned APP for the State opposing the bail contends that the petitioners have been arrested from the spot along with high quality Fake Indian Currency Notes (FICN) amounting to ₹1 lakh from Motilal Basak and amounting to ₹2 lakh from Vikas Kumar Sharma. He further states that the petitioners were part of a syndicate which was operating from the jail and in view of the seriousness of the offence, no bail be granted. Further Call Detail Record shows connectivity between all the accused.

6. The above-noted FIR was registered after an interception was carried out of the mobile phone of Manga Singh who was in custody in Patiala jail.

As per the interception, Vishnu and Baljinder were to sent one person each to collect the amount from Ghaziabad and based on the said interception, the two petitioners were apprehended at Anand Vihar Metro Station and from their possession ₹1 and ₹2 lakh Fake Indian Currency Notes were recovered. Pursuant to the said interception it was found that Motilal coming from Malda was to hand-over fake currency to Vikas who was coming from Punjab and while Motilal had transferred a sum of ₹2 lakh, the two of them were apprehended with Motilal still in possession of ₹1 lakh Fake Currency Notes. The statement of the two accused were recorded and expert opinion was received wherein it was opined that all the referred suspected notes of ₹500 and ₹1000 denomination were of high quality Fake Currency Notes and thus falling in the Schedule of UAPA and its amended Act, 2012.

7. It may be noted that when petitioners were taken in custody on 19th June, 2016 Manga Singh was in Patiala jail and was talking to one Baljinder and Vishnu. Vishnu has not been apprehended till date. On production Manga Singh was interrogated, however he was never formally arrested and Baljinder who joined the investigation was also interrogated however never formally arrested and a charge-sheet qua Baljinder and Manga was prepared on 21st November, 2019, after their voice samples were taken and report of report of FSL result was ready on 12th January, 2018. The said supplementary charge-sheet qua Baljinder and Manga though prepared on 21st November, 2019 was filed by the investigating agency before the Court only on 28th April, 2022 thereby causing further gross delay in not only investigating the role of Baljinder and Manga but filing of the supplementary charge-sheet and the continued detention of the petitioners.

It may be further noted that charge-sheet against Baljinder and Manga Singh was filed only for offences punishable under Section 120B read with 489(B)/ 489(C) IPC despite the fact as per the FSL report the sample voices of Baljinder and Manga Singh tallied to the intercepted conversation, based whereon the two petitioners were arrested. Further, though charges have been framed against Baljinder Singh @ Lala and Manga Singh by the learned Trial Court, however no charge for offences punishable under Section 15 (1) (a) (iii a) of UAPA has been framed against Baljinder and Manga Singh, the main accused on whose interception the petitioners were arrested. Further in the trial, public witnesses have already been examined and only Police Officials or other official witnesses remain to be examined.

8. As per the charge-sheet as also the status report filed before this Court it is the case of the prosecution that the petitioners in conspiracy with Manga Singh and Baljinder Singh @ Lala and Vishnu indulged in trading, supplying and buying of Fake Currency Notes of high quality. As noted above, no charge for offence under Section 15 (1) (a) (iii a) of UAPA has been framed against the main conspirators i.e. Baljinder Singh and Manga Singh, though the petitioners who are admittedly as per the prosecution case only carriers were charged for offence punishable under Section 15 (1) (a) (iii a) of UAPA.

9. Considering the facts noted above and that petitioners have been in custody now for nearly 6 and a half years and despite directions of this Court to conclude trial within 1 year from 5th May, 2022 till date in the last 8 months only a few further witnesses have been examined and 18 witnesses are still to be examined, besides the 12 witnesses already examined are required to be recalled for cross-examination by the two other

accused and the minimum sentence prescribed for offence under Section 15 (1) (a) (iii a) UAPA being 5 years imprisonment, this Court deems it fit to grant regular bail to the petitioners pending trial. Further, considering the fact that the main accused have neither been arrested, nor charge-sheeted, nor charge under Section 15 (1) (a) (iii a) UAPA framed against them and the period of custody undergone, there have been unexplained delays in filing the supplementary charge-sheets, we are of the considered view that rigors of Section 43(D)(5) UAPA will not come in the way of the petitioners being entitled to bail.

10. Consequently, the petitioners are directed to be released on bail on the following terms and conditions:

- “i) they will furnish a personal bond in the sum of ₹1 lakh each with two sureties each of the like amount, of which one surety will be a family member of the petitioners;
- ii) the petitioners will also furnish their permanent residential addresses and the mobile phone numbers in the personal bond and share the pin location of their mobile phone with the Investigating Officer. The said mobile phones will be kept in active mode during the period of trial. In case of change of residential address/ mobile phone number the same will be intimated to the Court concerned by way of an affidavit;
- iii) besides attending the Court for trial on every date, unless exempted, the petitioners will report to the SHO of their Local Police Station on first Monday of every month and a six monthly report in this regard will be sent by the concerned SHO to the learned Trial Court of their regular attendance;

iv) the petitioners will not tamper with any evidence or influence the witnesses in any manner whatsoever.”

11. Petitions are disposed of accordingly.

12. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

POONAM A. BAMBA, J.

FEBRUARY 17, 2023
‘ga’