

**Court No. - 9**

**Case :-** CRIMINAL APPEAL No. - 1872 of 2023

**Appellant :-** Mohammad Shadab Aziz Qasmi

**Respondent :-** State Of U.P. Thru. Prin. Secy./  
Addl. Chief Secy. (Home) Lko. And Another

**Counsel for Appellant :-** Sheeran Mohiuddin  
Alavi

**Counsel for Respondent :-** G.A., Shiv Nath Tilhari

**Hon'ble Rajan Roy,J.**

**Hon'ble Ajai Kumar Srivastava-I,J.**

**1.** Heard learned counsel for the appellant and learned A.G.A. for the State.

**2.** This is an appeal under Section 21 of the National Investigation Agency Act, 2008 (hereinafter referred to as 'the Act, 2008') for setting-aside order dated 11.05.2023 passed by the Additional Sessions Judge, Court No. 5/Special Judge, NIA/ATS, Lucknow rejecting the bail application of the appellant herein bearing Bail Application No.3109 of 2023, CNR No. UPLK010067122023 arising out of Case Crime No.411 of 2022, under Sections 120-B, 121A, 153A, 295A, 109, 505(2) IPC and Sections 13(1)(a), 13(1)(b) and 39 of the Unlawful Activities (Prevention) Act, 1967, Police Station- Kharkhauda, District- Meerut.

**3.** The prosecution case in brief is that on 24.09.2022 an F.I.R. was lodged at Police Station-

Kharkhauda, District- Meerut to the effect that various Agencies including Anti-Terrorist Squad, Uttar Pradesh had been receiving information that Popular Front of India and certain other Muslim Organization were engaging themselves in Anti-National Activities with intent to divide and disintegrate India and establish Islamic State by 2047. They were conspiring to do so. The information was received by the Inspector, Anuj Kumar that in West U.P. under the leadership of State President of West U.P. of All India Imam Council and Ex Member of PFI, Mohd. Shadab Ajeej, accused Maulana Sajid, Mufti Shahzad and Mohd. Islam Qasmi were actively participating to strengthen the aforesaid organization and establish Gazwa-e-Hind in Hindustan. The Informant informed on 22.09.2022 that Mohd. Shadab Ajeej, Maulana Sajid, Mufti Shahzad and Mohd. Islam Qasmi were present at their house. Accordingly, they were apprehended for investigation. Ultimately, charge sheet dated 16.03.2023 was filed against the accused including the appellant herein. The appellant is in Jail since 23.09.2022. He applied for being enlarged on bail by means of Bail Application No.3109 of 2023 which has been rejected on 11.05.2023. It is this order which is impugned before us.

**4.** The contention of the appellant counsel was that charge sheet has already been filed against the appellant, therefore, there is no likelihood of

the investigation being affected. The appellant is in jail since 23.09.2022 and the charge sheet having already been filed and as there are several witnesses the trial is not likelihood to be completed in the near future, therefore, he is entitled to be enlarged on bail. He has been charged with the offences under Section 120-B, 121-A, 153-A, 295-A, 109, 505(2) IPC and Sections 13(1)(a), 13(1)(b) and 39 of Unlawful Activities (Prevention) Act, 1967. The submission was that the substantive offence under Section 121-A IPC itself is not made out in view of the pronouncement of Hon'ble the Supreme Court in **Criminal Appeal No. 639 of 2023; Vernon Vs. State of Maharashtra and Anr.** dated 28.07.2023, according to which, mere possession of some pamphlets etc. by itself does not satisfy the ingredients of Section 121-A IPC. As regards other offences under Sections 153-A, 295-A, 505(2) IPC they carry a sentence of three years, whereas, the appellant has already remained in jail since 23.09.2022 and the trial is still pending. As regards the offence under Sections 13(1)(a), 13(1)(b) and 39 of the Act, 1967 is not made out against him, therefore, in view of the aforesaid, according to him, the appellant is entitled to be enlarged on bail. As regards criminal history, there is one criminal case against the appellant. He is on bail in the said case, a fact which has been averred in Para 40 of the affidavit filed in support of the bail application. He also submitted that in fact the PFI Organization was banned on

28.09.2022, whereas, the F.I.R. was lodged on 24.09.2022 and appellant's arrest is also prior to banning of the Organization, therefore, the appellant was not a member of any unlawful association on the date of lodging of the F.I.R. He has invited our attention to Page 120 of the Appeal No.1864 of 2023, which, contains a notification banning the said Organization. For all these reasons he contended that the appellant is entitled to be enlarged on bail.

**5.** Shri S.N. Tilhari, learned counsel for the State has vehemently opposed the bail application, but, he could not deny the fact that except for the offence under Section 121-A IPC the other offences under the IPC carried a sentence of 3 years or less. As regards the Section 120-B IPC the sentence would be as per the substantive offence. He could also not deny the legal position as enunciated by the Supreme Court in **Vernon's case (supra)**. He, however, submitted that the appellant along with other accused was indulging in Anti-National Activities and therefore, if he is enlarged on bail he would again commit similar crime, thereby, endangering the integrity of this nation.

**6.** We have perused the order of the trial Court which is impugned herein.

**7.** Having heard learned counsel for the parties and having perused the records, we are of the opinion that charge sheet having already been filed against the appellant whatever evidence was

there, has already been collected, therefore, it is not a case where the investigation would be affected or influenced in any manner. The trial is still pending and there is no likelihood of it being completed in near future, even otherwise, except for the offence punishable under Section 121-A IPC the other offences under the IPC carry a sentence of 3 years or less than 3 years, whereas, the appellant has remained in Jail since 23.09.2022. Moreover, the judgment of the Supreme Court in **Vernon's case (supra)** is being relied by the appellant in support of his claim for being enlargement on bail. Other submission of learned counsel for the appellant regarding the date of banning of PFI, is also relevant. As regards criminal history, the appellant is on bail as mentioned in para 40 of the affidavit filed in support of bail application. Section 43-D(5) of the Act, 2008 is attracted. We bear in mind the judgment of Hon'ble the Supreme Court in **Union of India vs. K.A. Najeev** reported in **(2021) 3 SCC 713**.

**8.** In view of the aforesaid, we are of the opinion that the trial Court has erred in rejecting the bail application. It has failed to consider the bail application in proper prospective in light of the relevant aspects of the matter and the order dated 11.05.2023, which is impugned herein, is liable to be set-aside. The same is accordingly quashed.

**9.** In view of the above, without making any comments on merits of the case which is pending before the trial Court, we are of the opinion that

the appellant herein is entitled to be released on bail during pendency of the trial.

**10.** The criminal appeal is **allowed**. We accordingly order the release of appellant - **Mohammad Shadab Aziz Qasmi** on bail on his furnishing a personal bond and two sureties each of the like amount to the satisfaction of the Court concerned, with the following conditions:-

(i) The appellant shall deposit his passport with ATS, Meerut and shall not leave the country without permission of the trial Court.

(ii) Appellant shall not leave boundaries of the State of Uttar Pradesh without permission of the trial Court. He shall present himself before the Investigation Officer of Police Station ATS, Meerut in the third week of every month and if not possible on the said date, he shall positively appear by the last day of the month.

(iii) Appellant shall not indulge in any criminal activity while on bail and if he does, then, it can be made the basis for seeking cancellation of the bail by the prosecution.

(iv) The appellant shall not communicate or try to communicate with any of the witnesses or alleged victims or try to influence them otherwise and if he does, then, this can be made a ground for seeking cancellation of his bail.

(v) 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.

(vi) 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.

**11.** It is made clear that observations made in this order shall not affect the trial, in any manner.

**(Ajai Kumar Srivastava-I, J.) (Rajan Roy, J.)**

**Order Date :- 19.12.2023**

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