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

% *Date of Decision: 08.01.2025*

\+ **BAIL APPLN. 38/2025**

SHEIKH SEHZAD .....Petitioner

Through: Mr. S.K. Rai, Advocate

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Satinder Bawa, APP for the State with SI Dharmender

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (*ORAL*)

CRL.M.A. 182/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.

2. The application is disposed of.

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3. The present application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereafter '*BNSS*') has been filed on behalf of the applicant, seeking grant of regular bail in case arising out of FIR bearing no. 30/2021, registered at Police Station Special Cell (Lodhi Colony), Delhi, for offences punishable under Sections 489B/489C of the Indian Penal Code, 1860 (hereafter '*IPC*') and Section 15(1)(a)(iiia) read with Section 16 of the Unlawful Activities (Prevention) Act, 1967 (hereafter '*UAPA*').

4. Issue notice. Mr. Satinder Bawa,learned APP accepts notice of the present bail application on behalf of the State.

5. Brief facts of the case, as per prosecution, are that on 21.01.2021, information was received by the Special Cell that one Sheikh Shehzad (the present applicant), resident of Motihari, Bihar would come to Anand Vihar Railway Station to deliver one big consignment of Fake Indian Currency Notes (hereafter '*FICN*') to two persons namely Raja and Rehmhan, after procuring it from one Habibur Rehman, a resident of Malda, West Bengal. Pursuant to receipt of information, a raiding team was formed and a trap was laid near Anand Vihar Railway Station. The applicant Sheikh Shehzad arrived at the spot at about 10:25 AM, after which he was apprehended by the police and was searched. During search of his *Pitthu* bag, a white polythene was found, in which two bundles of currency notes of Rs.2,000/- denomination were found. Notes were counted and a total of 200 notes amounting to Rs.4,00,000/- were recovered from his possession. Thereafter, the present FIR was registered, and the applicant herein was arrested. One mobile phone was also recovered from his possession, which was kept for investigation purpose.

6. As per prosecution, the applicant Sheikh Shehzad disclosed during the course of investigation that he used to procure FICN from Habibur Rehman, and supply the same to various persons in Uttar Pradesh and Delhi including Raja, Rehman and Chandan. The applicant further disclosed that he could get the other persons arrested

from different States and more FICN can be recovered from their possession. During investigation, the recovered FICN amount to Rs.4,00,000/- were deposited in Currency Note Press, Nasik Road, Government of India on 24.02.2021, for expert opinion. The report was received, in which it was opined that all the recovered notes were fake and out of 200 notes, 108 notes were high-quality counterfeit notes. Thereafter, teams from Northern Range were sent to Malda, West Bengal, in order to arrest Habibur Rehman, who came to be arrested on 19.06.2021 in the present case. As per prosecution, he admitted that he had supplied FICN of Rs.4,00,000/- to the applicant Sheikh Sehzad in January, 2021. In view of these allegations, Section 16 of UAPA was also added against the accused persons, and chargesheet was filed.

7. The learned Trial Court, *vide* order on charge dated 01.06.2022, held that *prima facie*, an offence under Sections 489B/489C of IPC and Section 16 of UAPA was made out against the applicant; however, the co-accused Habibur Rehman was discharged by the learned Trial Court.

8. The learned counsel appearing for the present accused/applicant argues that the applicant has been falsely implicated in the present case, and he has been in judicial custody since 21.01.2021. It is contended that there is no public witness in this case and only police officials are the prosecution witness. It is argued that the seizure memos, arrest memo, personal search memo, etc. bears thumb impressions, however, nowhere it is mentioned as to

whose thumb impression are those. It is also argued that the investigation agency did not request any independent public witness to join the proceedings at the spot, despite there being such occasions, and on a bare reading of testimony of PW-2 and PW-6, it becomes clear that the present case is concocted and the witnesses have been unable to point out the location from where the car/police vehicle was arranged. It is further submitted that co-accused Habibur Rahman has already been discharged from the case, and the case of the prosecution against the applicant is also concocted and based solely on the evidence of the police officials. Therefore, it is prayed that the applicant be released on bail.

9. *Per contra*, the learned APP for the State opposes the bail application, and argues that at this stage, this Court is not required to test the veracity of the prosecution witnesses. It is pointed out that two bundles containing 100 FICN each i.e. 200 FICN in total, amouting to a total of Rs.4,00,000/-, were recovered from the present applicant. It is stated that out of total 200 recovered FICN, 108 FICN are of very high quality, and that the factum of applicant being in possession of such a high quantity of high quality FICN points towards threat to the monetary stability of the nation and thus, offence under UAPA is also made out against the applicant. It is furthe submitted that applicant is also involved in another case i.e. FIR No. 40/2016, P.S Special Cell under Sections 489B/489C/34 of IPC is also pending against him.

10. This Court has **heard** arguments addressed on behalf of both

the parties, and has perused the case file.

11. The gravamen of the allegations against the applicant are that he was involved in delivering a large consignment of FICN at Anand Vihar Railway Station, Delhi, and that he had obtained the said FICN from one Habibur Rehman, a resident of Malda, West Bengal, and was intending to supply the same to individuals in Uttar Pradesh and Delhi. The evidence against the applicant includes the recovery of 200 FICN, of Rs.2,000/- each, totaling Rs.4,00,000/-, from his possession at the time of his arrest. An expert report from the Currency Note Press confirmed that all the recovered notes were fake/counterfeit, and 108 out of 200 FICN were identified as high-quality counterfeit notes.

12. The applicant has been charged for offence under Sections 489B/489C of IPC and Section 16 of UAPA. Notably, Section 489B of IPC pertains to offence of selling, buying, receiving or trafficking in forged or counterfeit currency notes, and provides for punishment upto life imprisonment or imprisonment which may extend to ten years. Section 489C of IPC pertains to possession of forged or counterfeit currency notes, and provides for punishment upto seven years.

13. The learned Trial Court, in the impugned order, has also taken note of the decision of the Coordinate Bench of this Court in ***Tabrez Ahmed v. State (NCT of Delhi):*** *2021 SCC OnLine Del 4119*, wherein it was observed as under, *inter alia*, with respect to offences under Section 489B and 489C of IPC:

"6. Sections 489A, 489B, 489C, 489D and 489E were specially inserted by the legislature in the IPC to protect the economy of the country.

7. The Supreme Court in *K. Hashim v. State of Tamil Nadu, (2005) 1 SCC 237*, has explained the legislative intent of the provisions pertaining to counterfeiting of currency. Paragraph 46 to 50 of the said judgement reads as under:—

> "46. Sections 489-A to 489-E deal with various economic offences in respect of forged or counterfeit currency notes or banknotes. The object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and banknotes.
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> 47. Section 489-A not only deals with complete act of counterfeiting but also covers the case where the accused performs any part of the process of counterfeiting. Therefore, if the material shows that the accused knowingly performed any part of the process of counterfeiting, Section 489-A becomes applicable.
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> 48. Similarly Section 489-B relates to using as genuine forged or counterfeited currency notes or banknotes. The object of the legislature in enacting this section is to stop the circulation of forged notes by punishing all persons who knowing or having reason to believe the same to be forged do any act which could lead to their circulation.
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> 49. Section 489-C deals with possession of forged or counterfeit currency notes or banknotes. It makes possession of forged and counterfeited currency notes or banknotes punishable. Possession and knowledge that the currency notes were counterfeited notes are necessary ingredients to constitute offence under Sections 489-C and 489-D. As was observed by this Court in State of Kerala v. Mathai Verghese [(1986) 4 SCC 746 : 1987 SCC (Cri) 3 : (1986) 4 SCC 746 : AIR 1987 SC 33] the expression "currency notes" is large and wide enough in its amplitude to cover the currency notes of any country. Section 489-C is not restricted to Indian currency note alone but it includes the dollar also and it applies to American dollar bills.
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> 50. The wording of Section 489-D is very wide and would clearly cover a case where a person is found in

> possession of machinery, instrument or materials for the purpose of being used for counterfeiting currency notes, even though the machinery, instruments or materials so found were not all the materials particular (sic) required for the purpose of counterfeiting."

14. Further, Section 15(1)(a)(iiia) of UAPA defines a 'Terrorist act', and specifically pertains to "damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material", and the punishment for the same is provided under Section 16 of UAPA, and sub-section(1)(b) provides minimum punishment of five years and maximum punishment of imprisonment for life.

15. Concededly, since the applicant has been charged for committing offence under Section 15(1)(a)(iiia) read with Section 16 of UAPA, which falls under Chapter IV of UAPA, the bar to grant of bail under Section 45(D)(5) of UAPA would be attracted in the case. Section 45(D)(5) and (6) of UAPA is set out below:

> "43D. Modified application of certain provisions of the Code.
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> (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:
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> 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.**
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> (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."
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> (Emphasis added)

16. In case of ***Thwaha Fasal v. Union of India:*** *(2022) 14 SCC 766*, the Hon'ble Supreme Court observed as under, in respect of grant of bail viz. Section 43(D)(5) of UAPA:

> "26. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the of-fences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the court while examining the issue of prima facie case as required by sub-section (5) of Section 43-D is not expected to hold a mini trial. The court is not supposed to examine the merits and demerits of the evidence. **If a charge-sheet is already filed, the court has to examine the material forming a part of charge-sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the court has to take the material in the charge-sheet as it is.**"
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> (Emphasis supplied)

17. Thus, in view of Section 43(D)(5) of UAPA, the applicant can only be released on regular bail if no *prima facie* case against him is made out from a perusal of the chargesheet.

18. In the present case, the charges under UAPA have already been framed against the applicant, and the perusal of chargesheet clearly

indicates that a *prima facie* case is made out against him, inasmuch as the applicant allegedly was apprehended at the spot, and large quantity of FICN, including high quality counterfeit notes, were recovered from his possession, and Section 15(1)(a)(iiia) of UAPA covers within its ambit, the aspect of 'circulation of high quality counterfeit Indian paper currency'.

19. A perusal of records reveals that all public witnesses have already been examined before the learned Trial Court, and only a few formal witnesses remain to be examined. Morevoer, the applicant is also involved in another case of similar nature i.e. FIR No. 40/2016, P.S Special Cell under Sections 489B/489C/34 of IPC.

20. In view of the foregoing discussion, this Court is not inclined to grant regular bail to the applicant at this stage.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 8, 2025/A