



\$~27

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL.A. 299/2025

ABDUL RASHID SHEIKH

.....Appellant

Through:

Mr. N. Hariharan, Sr. Advocate with
Mr. Vikhyat Oberoi, Ms. Nishita
Gupta, Mr. Shivam Prakash, Mr.
Ravi

Sharma, Ms. Jagriti Pandey,
Ms. Punya Rekha Angara, Ms.
Vasundhara, Ms. Sana Singh, Mr.
Aman Akhtar, Mr. Vinayak Gautam
and Mr. Hosnaih Khwaja, Advocates

versus

NIA

.....Respondent

Through:

Mr. Rajkumar Bhaskar Thakare, ASG
with Mr. Akshai Malik, SPP and Mr.
Khawar Saleem & Mr Akash Kavade,
Advocates for NIA.

Mr. B.B. Pathak, Add. SP for NIA
with Dy. S.P. Abhishek Kumar, NIA.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

25.03.2025

%

By way of the present appeal filed under Section 21 of the National Investigation Agency Act, 2008 ('NIA Act' hereinafter), the appellant impugns order dated 10.03.2025 passed by the learned ASJ-03, Patiala House District Courts, New Delhi ('learned ASJ' hereinafter) in RC No. 10/2017/NIA/DLI, whereby, the appellant's application seeking interim bail, and in the alternative custody parole,



to attend the Second Part of the 4th Parliamentary Session of the 18th Lok Sabha, was rejected.

2. Regardless of the prayers made in the present appeal, Mr. N. Hariharan, learned senior counsel appearing on behalf of the appellant, submits that he would confine the relief sought by the appellant to the limited aspect of having been permitted to go 'in-custody' to attend the remaining sessions of Parliament scheduled between 12.03.2025 and 04.04.2025.
3. Notice on this appeal was issued *vide* order dated 12.03.2025; consequent whereupon reply dated 17.03.2025 has been filed on behalf of the National Investigation Agency ('NIA' hereinafter).
4. The court has heard Mr. N. Hariharan, learned senior counsel appearing on behalf of the appellant; as well as Rajkumar Bhaskar Thakare, learned ASG appearing on behalf of the NIA at considerable length.
5. At the outset, for clarity, it may be noted that the appellant - ***Abdul Rashid Sheikh @ Engineer Rashid*** - is one of the accused in case RC No. 10/2017/NIA/DLI dated 30.05.2017 registered under sections 120-B/121/121-A of the Indian Penal Code, 1860 ('IPC' hereinafter) and section 13/16/17/18/20/38/39/40 of the Unlawful Activities (Prevention) Act, 1967 ('UAPA' hereinafter).
6. The appellant was arrested in the said case on 09.08.2019 and has been in-custody ever-since, subject only to the brief spells of interim bail and 'in-custody' release that he has got, as detailed hereinafter.
7. The appellant was not named in the subject complaint as originally filed; however it is the NIA's case that during the course of



investigation it transpired that the appellant was involved in the activities of various terrorist and secessionist groups, including the Jammu & Kashmir Liberation Front, Hizb-ul-Mujahideen, Lashkar-e-Taiba and various other groups in waging war against the Government of India.

8. The aforesaid backdrop notwithstanding, *vide* order dated 10.09.2024 passed by the learned ASJ in RC No. 10/2017/NIA/DLI, the appellant was granted interim bail for contesting the Parliamentary Elections in Jammu & Kashmir from the Baramulla constituency for the 18th Lok Sabha held in the year 2024. A copy of the said order has been appended to the present appeal as Annexure A-32. Relying on the observations made by the Supreme Court in ***Arvind Kejriwal vs. Directorate of Enforcement***,¹ and ***People Union for Civil Liberty & Anr. vs. Union of India & Anr.***,² by way of the said order, the learned ASJ recorded the NIA's stance in the matter in the following words:

“On behalf of State, essentially, no objection is submitted, when the submissions have been made that applicant/accused may be admitted in interim bail till 01.10.2024.”

9. Subsequently, after a brief discussion, including the observation that the NIA had nowhere contended that the appellant had violated any condition of custody parole granted to him previously, the learned

¹ (2024) 9 SCC 577

² (2013) 10 SCC 1



ASJ was pleased to grant to the appellant interim bail for contesting elections, subject to certain conditions, as set-out in the said order.

10. Pursuant to the above, the appellant succeeded in the Lok Sabha polls and came to be elected as a Member of Parliament representing Baramulla constituency of Jammu & Kashmir.
11. Thereafter, the appellant approached this court *vide* W.P.(CRL.) No. 233/2025, by which he again sought interim bail, or in the alternative custody parole, to attend the First Part of the 4th Parliamentary Session of the 18th Lok Sabha, which were then scheduled between 31.01.2025 to 04.04.2025. As in the present proceedings, before a learned Single Judge of this court in W.P.(CRL.) No. 233/2025 also, the appellant confined his prayer to grant of 'custody parole' to attend the ongoing Parliament Session, citing the fact that he had been invited by the Hon'ble President of India through the Secretary General of the Lok Sabha to attend those sessions. In the said proceedings, the appellant had pointed-out that earlier he had applied for interim bail for attending Parliament Session, which prayer was however rejected by the learned ASJ *vide* order dated 29.07.2024 in RC No. 10/2017/NIA/DLI; but subsequently, he was granted interim bail *vide* order dated 10.09.2024 in RC No. 10/2017/NIA/DLI on a 'no-objection' having been given by the NIA.
12. The appellant had also drawn the attention of the learned Single Judge to the fact that 'custody parole' for similar purpose had been granted to other parliamentarians as well. In this behalf, attention was drawn to order dated 27.11.2008 passed in ***Rajesh Ranjan @ Pappu Yadav vs. Union of India & Ors.***, W.P.(C) No. 7548/2008 and order



dated 10.02.2009 passed in ***Rajesh Ranjan @ Pappu Yadav vs. Union of India & Anr.***, W.P.(C) No. 854/2009.

13. Before the learned Single Judge, the NIA had argued that legislators and parliamentarians had no enforceable right to attend sessions of the House while they are under lawful detention; and though it has been held that the right to vote and the right to contest elections are statutory rights, the right to attend a session of Parliament during judicial custody is different and is not conferred by statute. In this regard, the NIA had placed reliance on the decisions of various High Courts, including of a Division Bench of this court in ***Suresh Kalmadi vs. Union of India & Ors.***³ and a decision of a learned Single Judge of this court in ***Suresh Kalmadi vs. Union of India & Ors.***⁴
14. In the aforesaid matter, the learned Single Judge eventually granted the appellant ‘custody parole’ to attend the Parliament Session for the remaining 02 days *i.e.*, on 11.02.2025 and 13.02.2025, by imposing certain conditions as contained in the order dated 10.02.2025 in W.P.(CRL.) No. 233/2025.
15. To be clear, the learned Single Judge observed that his order would not be considered as a precedent; that it was being passed in the peculiar facts of the appellant’s case; and that any prayer for further custody parole would be considered by the concerned court on merits and in accordance with law.

³ 2011 SCC OnLine Del 3279

⁴ ILR (2011) Delhi 795



16. Mr. Hariharan has pointed-out, that the appellant's recent representation to the Lok Sabha Secretariat seeking permission to attend the sessions of the Lok Sabha has received a response dated 01.02.2025 in the following words :

“Subject: Representation regarding attendance in sittings of Lok Sabha.

Sir,

With reference to your representation on the above mentioned subject, I have been directed to state that as per existing practice, summons have been served to you through the Jail Superintendent, Central Jail, Tihar, New Delhi.

2. It is brought to your notice that attendance in sittings of the House in the present case is contingent upon appropriate orders of a competent Court.”

17. It is accordingly argued on behalf of the appellant, that though it is not his case that he has a statutory or constitutional right to attend the Parliament Session since he is in judicial custody, it is his prayer that to enable him to discharge and perform his duties and obligations as a duly elected Member of Parliament, he may be sent for the Parliament sittings ‘in-custody’ with appropriate conditions being imposed, as was done *vide* order dated 10.02.2025 passed by the learned Single Judge of this court in W.P.(CRL.) No. 233/2025.
18. Mr. Hariharan has argued that the appellant has availed the aforesaid order of the learned Single Judge; and there is no allegation that the appellant violated any condition of that order or that he indulged in any act or omission otherwise that would disentitle him from availing the same benefit.



19. Further, learned senior counsel for the appellant, on instructions, submits that if released 'in-custody', the appellant undertakes that he shall not violate any of the provisions of the 'Rules of Procedure and Conduct of Business in Lok Sabha', 'Practices and Procedures of Parliament' etc., and shall adhere to the norms and standard procedure of the Parliament while conducting the duties of a Member of Parliament within the premises of the Parliament as well as outside.
20. The NIA, being represented by the learned ASG, has vociferously opposed the grant of any relief to the appellant in the present proceedings. Learned ASG argues that even permission to attend Parliament sittings 'in-custody' would pose a threat to National Security since the appellant would then have a platform and a forum to voice his opinions in Parliament.
21. It has further been argued, that once the appellant is within the precincts of Parliament, and in particular within the precincts of the Lok Sabha House, he would cease to be in the custody of the court; and an order taking him to Parliament 'in-custody' would, thereby, be rendered purposeless.
22. This court has given its anxious and careful consideration to the rival contentions that have been vociferously argued before it, at substantial length.
23. Upon a conspectus of the facts and circumstances obtaining in the matter, the considerations that weigh with the court are the following :



- 23.1. There is absolutely no doubt in the mind of this court that the appellant is accused of very serious offences *inter-alia* under the UAPA; and the essential allegation against the appellant, viz. that he was collaborating with certain outfits for funding secessionist and separatist activities in Jammu & Kashmir and waging war against the Government of India, is not to be taken lightly. It is by reason of such allegations, that the appellant has been in judicial custody since the time of his arrest on 09.08.2019, after the appellant's name allegedly surfaced in the case; and he is facing trial by way of the 2nd supplementary chargesheet filed in the matter.
- 23.2. The aforesaid position notwithstanding, *vide* order dated 10.09.2024 passed by the learned ASJ, the appellant was granted interim bail (not even custody parole) to contest Parliamentary Elections in Jammu & Kashmir; he subsequently succeeded and was returned as a Member of Parliament in the 18th Lok Sabha, representing the Baramulla constituency of Jammu & Kashmir.
- 23.3. The settled position of law is that undertrials are eligible to contest Parliamentary Elections notwithstanding that they may be charged with heinous offences. Having been duly elected, the appellant was administered oath of his office, despite the fact that he is an undertrial facing serious charges. As a Member of Parliament, the appellant owes to the people of his constituency the duty and responsibility to represent them in Parliament.



- 23.4. As things stand now, the appellant has limited his prayer in the present proceedings only to being permitted to be taken ‘in-custody’ to attend the Parliament Session scheduled between 12.03.2025 and 04.04.2025. He has dropped the prayer seeking interim bail or any such other relief.
- 23.5. *Vide* order dated 10.02.2025, the learned Single Judge of this court had granted to the appellant similar relief, *i.e.*, permission to be taken ‘in-custody’ to attend the Parliament Session on 11.02.2025 and 13.02.2025, subject to certain conditions which were imposed by that order. There is no allegation that the appellant violated any of the conditions imposed by the learned Single Judge; nor that he indulged in any act or omission that would disentitle him from getting similar relief subsequently.
- 23.6. This court is confident, that subject to the conditions that the court proposes to impose by this order, the State machinery would be able to ensure the integrity of the appellant’s custody, so that he remains available to face trial.
- 23.7. As for the NIA’s apprehension that once the appellant is within the precincts of Parliament, and in particular inside the House, the appellant would cease to be ‘in-custody’ of the court and would therefore be beyond the court’s control, we are of the view that such apprehension is without any basis, since the appellant would only temporarily be handed-over to the Parliament security detail and that too for the limited purpose of performing his duties as a Member of Parliament of his constituency. Furthermore, the NIA’s submission that the



appellant, who is an elected Member of Parliament, would be a flight-risk within the precincts of Parliament, is to be heard only to be rejected.

23.8. As for the NIA's apprehension that by allowing the appellant to attend the Parliament Session, he would be afforded a platform to air his opinions which he may misuse, suffice it to say that the control of Parliamentary proceedings is within the remit of the Hon'ble Speaker of the Lok Sabha; and this court has no doubt that Parliamentary proceedings would be conducted with requisite discipline. Again therefore, this court would not lend credence to the apprehension expressed by the NIA on this count.

23.9. It is also relevant to note that the NIA had given a 'no-objection' when the appellant was granted interim bail *vide* order dated 10.09.2024; and the NIA have never challenged order dated 10.09.2024; nor have they challenged order dated 10.02.2025 passed by the learned Single Judge.

24. As a sequitur to the foregoing and in light of the undertaking given by the learned senior counsel for the appellant, on instructions, this court is persuaded to accept the limited prayer pressed in the present matter, by directing that the appellant – ***Abdul Rashid Sheikh @ Rashid Engineer*** – is permitted to attend the Second Part of the 4th Session of the 18th Lok Sabha Parliament, scheduled between 26.03.2025 and 04.04.2025, '**in-custody**', subject to the following terms and conditions :



- 24.1. The Director General (Prisons) is directed to send the appellant ‘*in-custody*’ under police escort from prison to the Parliament House on each of the dates on which the Lok Sabha is in session between 26.03.2025 and 04.04.2025, during the hours that the Lok Sabha is in session on those days;
- 24.2. At the Parliament House, the appellant shall be handed-over to the custody of Parliament security/marshals, who shall allow the appellant to attend the proceedings of the Lok Sabha and to avail other facilities and amenities within the Parliament House during the hours that the Lok Sabha is in session; and shall thereafter hand-back custody of the appellant to the prison escort, who will bring him back to prison straight from the Parliament House, on the same day, without any delay;
- 24.3. While out to attend the Parliament Session, the appellant shall not be entitled to use any cellular or landline phone or other communication device; nor shall he be entitled to have access to the internet by any mode;
- 24.4. The appellant shall not interact with any other person, at any time while he is outside the premises of jail, except within the premises of Lok Sabha House and in relation to performance of his role as a Member of Parliament as per the requisite discipline permitted by the Lok Sabha Rules;
- 24.5. The appellant shall not engage with or address the Media (electronic/print), neither within the premises of the Parliament, nor outside, in any manner whatsoever, including about the pendency of the criminal proceedings against him;



- 24.6. Upon conclusion of the proceedings of the Lok Sabha on *each day*, the appellant shall be brought back and admitted to prison even if it happens to be beyond official hours as per jail rules; and
- 24.7. The expense for the aforesaid travel and other arrangements shall be borne by the appellant.
25. The Secretary General of the Lok Sabha is requested to ensure compliance of the foregoing conditions by taking requisite steps as may be required, as per Parliament rules, to ensure that the appellant's judicial custody is not compromised.
26. Needless to add, that any steps taken by the Secretary General of the Lok Sabha would be consistent with the intent and purpose of the present order, which is to allow the appellant to participate in Parliamentary proceedings of the Lok Sabha for the given dates.
27. While performing their role as directed above, the police escort/prison guards shall remain in plain-clothes.
28. It is clarified that this order is not intended to constitute a precedent; and any subsequent prayer seeking similar relief on similar grounds would be considered on its own merits, in accordance with law.
29. Further, it is made clear that in the event of violation of any of the terms and conditions as well as the undertaking noted hereinabove by the appellant, the NIA shall be at liberty to apply for cancellation/withdrawal of the permission granted above.
30. It is also made clear that the observations made hereinabove shall not be construed as an expression of this court on the merits of the case pending before the court concerned.



31. Let a copy of this order be communicated to the Director General (Prisons), the concerned Jail Superintendent as well as to the Secretary General of the Lok Sabha for information and compliance, *forthwith*.
32. The appeal is allowed and stands disposed-of, in the above terms.
33. Pending applications, if any, also stand disposed-of.

CHANDRA DHARI SINGH, J

ANUP JAIRAM BHAMBHANI, J

MARCH 25, 2025

ss/ryp

Click here to check corrigendum, if any