IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on:27.07.2025
Pronounced on:31.07.2025

CrlA(D) No.82/2024

ZAHOOR AHMAD MIR, …Petitioner/Appellant(s)
AGED 37 YEARS
S/O GHULAM RASOOL MIR,
R/O SALLAR, ANANTNAG.
THROUGH HIS FATHER
GHULAM RASOOL MIR,
AGED 70 YEARS.

Through: Mr. Sajad Ashraf, Advocate.

Vs.

UT OF J&K THROUGH SHO P/S PAHALGAM ...Respondent(s)

Through: Ms. Maha Majid, Assisting Counsel vice
Mr. Mohsin Qadri, Sr. AAG.

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

JUDGEMENT

'Sanjay Parihar (J).

1. The appellant, facing prosecution in case FIR No.30/2022 for offences u/s 18, 19, and 20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'the Act'), has thrown challenge to the order dated 08.11.2024 (hereinafter referred to as 'the impugned order) passed by the Special Judge (UAPA) Anantnag, in terms whereof he has been denied concession of bail.

2. The appellant claims to be innocent having been falsely implicated in case FIR No.30/2022 and that the allegations leveled against him were that on 06.05.2022, he tried to escape from cordon and search operation at Akad Forest falling within the jurisdiction of Police Station, Pahalgam, which is totally false as he was arrested a day

prior. He further claims to have neither made any disclosure nor any recovery has been affected from him and during trial as many as 7 witnesses have been examined who did not depose anything incriminating against him. He claims to have been made as human shield by security forces and thereafter roped in a false case.

3. According to the prosecution, on 06.05.2022, at around 8 pm, the police agency of Police Station Pahalgam, in coordination with 3rd Rashtriya Rifles, had launched a cordon and search operation, where they noticed the appellant moving in suspicious circumstances, who tried to evade the cordon and was tactfully pounced upon and during questioning admitted to have disclosed to the police that he was working for terrorists by providing them logistics as well as facilitating their movement from one place to another, that gave rise to the commission of offences under Sections 18 and 39 of the Act, for which the case FIR No. 30/2022 came into being.

4. During the investigation, the appellant-(Zahoor Ahmed Mir), is found to have disclosed that he was in constant contact with Aadil Gulzar and Roshan Zameer, out of whom the former was killed at Line of Control. He further claimed to have contacts with Mohammad Ashraf Khan @ Ashraf Molvi and Rafiq Drangay, with whom he had met a number of times and had provided them food and shelter in the jungle of Srichen with active support of co-accused Mohammad Iqbal Khan.

5. It is further alleged that as per disclosure of co-accused Mohammad Iqbal Khan, during searches in Hokard Forest for tracking down the hidden terrorists, who fired upon police and in that encounter three of them, namely Roshan Zameer, Mohammad Ashraf @ Ashraf Molvi

and Mohd Rafiq Drangay who all were affiliated with Hizbul Mujahideen outfit, were eliminated. It is further alleged that during investigation, certain witnesses deposed that appellant had several times visited the house of the co-accused in suspicious conditions. Furthermore, it is alleged that appellant herein was closely related to one Nazir Ahmed Mir, who was an active Pak militant and was eliminated sometime back, and another of his cousin, Mudassr Mir, is also involved in unlawful activities.

6. On the strength of the investigation, appellant and co-accused came to be charge-sheeted, whereas the others, having been killed in various encounters, could not be charge-sheeted. Appellant, therefore, is alleged to have committed offences under sections 18, 19 and 39 of the Act, for which he has been formally charged on 30.12.2022. The prosecution had cited as many as 26 witnesses, and by the time the record of the trial court was summoned, prosecution had examined PW-1, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-22, whereas, the rest of the witnesses are yet to be examined.

7. The respondents have filed their response to the appeal, claiming that the appellant is involved in serious offences that carry punishment extending to imprisonment for life, and that appellant has failed to carve out a strong *prima-facie* case for his enlargement on bail before the trial court. There are reasonable doubts for believing that the appellant has committed the offences, and in case, he is given the concession of bail, he is likely to jump over the bail, thereby hampering the trial, as most of the witnesses are yet to be examined. The appellant does not deserve concession of bail, as he was in

consistent touch with known terrorists. He had at several times provided them food and shelter in the jungles of Srichen, with the help of co-accused, inasmuch as, during investigation, the appellant has admitted his involvement, and the fact that the terrorists were later on eliminated goes on to show that the unlawful activities of the appellant posed a threat to the sovereignty of the nation. It was at the instance of the appellant, hideout of the terrorists was detected that led to cordon and search operation leading to the elimination of three terrorists.

8. Learned counsel for the respondents, while rebutting the case of the appellant, argued that the appellant has not been able to dilute the rigor of section 43-D of the Act and given the fact that a large number of witnesses are yet to be examined, in that background the appellant does not deserve concession of bail.

9. On the other hand, it is strenuously argued by counsel for the appellant that the only evidence sought to be attributed is the disclosure dated 06.05.2022 made at 8:25 hours and except that there is not even an iota of evidence linking the appellant with the allegation of being co-host and harbourer of the known militants. In fact, he claims to have been used as a human shield, along with co-accused Mohammed Iqbal Khan, at whose behest the hideout was detected that led to the elimination of few militants on 06.05.2022.

10. We have gone through the record of trial court and heard both counsels.

11. The appellant is facing prosecution for offences under Sections 18, 19, 29 of the Act and the offences fall in chapter IV and VI of the “Act”.

In terms of the Act the Court can deny bail if there are reasonable grounds for believing that the accusation against an accused is *prima-facie* true. *Prima-facie* would mean whether the accused is associated with any organization which is prohibited under the Act and whether he knowingly facilitated the commission of a terrorist act and also whether he voluntarily had provided logistic support to the terrorists. Admittedly, as per the charge sheet, on the disclosure of the co-accused searches were affected in Hokard forest area where terrorists were hidden, who all belonged to Hizbul Mujahideen outfit which is an organization proscribed in 1st Schedule of the Act and in the ensuing encounter, three terrorists were eliminated. The appellant claims that he was not accompanying co-accused Mohammad Iqbal Khan rather he asserted that he was used as a human shield having been arrested a day prior to this, but there is no material placed on record by him to contradict the version of the prosecution.

12. The trial court has, in terms of the order dated 30.12.2022, formally charged the appellant for offences under Sections 18, 19 and 39 of the Act, which *prima-facie* has persuaded the trial court to decline the concession of bail. In **"Zahoor Watali's case, 2019 (5) SCC 1"**, which is a similar set of case where charges had been framed but application was laid for grant of bail, the Apex Court while commenting upon the degree of satisfaction at pre charge-sheet, post charge-sheet has held in para 26 as under: -

> *26. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of courts must tilt in favour of the oft-quoted phrase_"bail is the rule, jail is the exception"_unless circumstances justify otherwise_does not find any place while dealing with bail applications under the*

UAP Act. The "exercise" of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in the proviso to Section 43-D (5) _ "shall not be released" in contrast with the form of the words as found in Section 437(1) CrPC_ "may be released"_ suggests the intention of the legislature to make bail, the exception and jail, the rule.

13. Once the charge sheet has been drawn that would assume that before the trial court there were strong suspicions derived from the material before it which necessitated the court to draw the charges. After drawing of charges as many as seven witnesses have been recorded out of 26 cited one and merely because the appellant claims that evidence already lead against him does not *prima-facie* link him with the commission of offences, he does not deserve to be granted bail, because a lot of material witnesses are yet to be examined.

14. Section 43-D from its very nature is an exception to the general rule of bail not jail and as held in **Gurwinder Singh's case 2024 (5) SCC 403**, that the conventional idea in bail jurisprudence that courts must tilt in favour of bail is rule, jail is an exception does not find its place while dealing with the bail plea in an offence under the Act. The exercise of general power to grant bail under the Act is severally restrictive in scope and the words "shall not be released", in contrast "may be released" suggest that the intention of the legislature to make bail the exception and jail the rule.

15. It was argued by learned counsel for the appellant that the trial of the appellant is proceeding at a snail's pace and the way witnesses are being examined, it may take years for the trial court to conclude, as such, prayer was made that having regard to the law laid down in K.

A. Najeeb's case, the Constitutional Court can exercise discretion of bail in favour of the petitioner.

16. Though the plea raised is very attractive but given the nature of offences committed and the mandate of Section 34-D of the Act, we are not persuaded to take such a recourse, because the evidence already recorded even if for the sake of arguments casts some amount of doubt in the prosecution case, however, given the fact that majority of the witnesses are yet to be examined, we are not persuaded to sift the evidence lead by the prosecution at this stage as that may prejudice the prosecution.

17. The fact that few of the terrorists were later on eliminated upon the disclosure of the appellant and the co-accused would *prima-facie* suggest that even though the appellant may have provided the said terrorists only logistic and economic support but that too lead into the killing of all the three terrorists. This goes on to show that there was strong *prima-facie* material showing their complicity with the terrorists belonging to the banned organization. So much so, the record would show that the appellant's cousin was a designated terrorists who was eliminated in an encounter whereas his another cousin is already facing charge under the Act. This all leads to the reasonable inference that the case put up against him is not based on hearsay or false implication. Given the stage of trial, the appellant do not deserve concession of bail and before us as well, the appellant has not been able to carve out a strong *prima-facie* case in order to persuade us to exercise any discretion in his favour.

18. We do not find any infirmity in the impugned order and given the fact that after rejection of bail the trial must have proceeded for recording of more witnesses, we leave it open to the appellant to take a chance afresh before the trial court, provided he is able to make out a case of change in circumstances. The Appeal is, therefore, **dismissed** in the like manner, leaving open to the appellant to lay a fresh motion before the trial court in case need arises.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR
31.07.2025
Ishaq

Whether the judgment is reportable ? No