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

Reserved on: 06.03.2025
Pronounced on: 12.03.2025

\+ CRL. A. 02/2020

NAVAL KISHORE KAPOOR .....Appellant

Through: Mr. Lakshay Dhamija, Mr. Mohit Gupta and Mr. Sagar Rawat, Advs.

versus

NATIONAL INVESTIGATION AGENCY .....Respondent

Through: Mr. Sidharth Luthra, Sr. Adv. with Mr. Akshai Malik, SPP, Mr. Ayush Agarwal, Mr. Karl P. Rustomkhan, Mr. Udbhav Sinha, Mr.Siddhant Gupta, Mr. Khawar Salim, Advs.
Mr.B. B. Pathak, Dy. SP Mr. Ankit Rohilla, Insp., NIA

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present Appeal under Section 21(4) of the National Investigation Agency Act, 2008 (NIA Act) is directed against the Order dated 19.08.2019, passed by the learned Additional Sessions Judge-03 (ASJ), Special Court (NIA), Patiala House Court, New Delhi in NIA Case No. RC-10/2017/NIA/DLI titled ***State (NIA) vs. Hafiz Muhammad Saeed and Ors.***, whereby the Appellant's regular bail application dated 30.09.2018 has been rejected.

BRIEF FACTS:

2. It is the case of the Prosecution that the Ministry of Home Affairs, on 30.05.2017, issued an Order no. 11011/2017-IS-IV, in exercise of the powers conferred by Section 6(5) read with Section 8 of the NIA Act, directing the NIA to register a Regular Case and carry out an investigation as credible information had been received by the Central Government that Hafiz Muhammad Saeed, the Chief of the Jammat-ud-Dawah, and other secessionists and separatists leaders, including various members of the Hurriyat Conference, had been acting in connivance with the active militants of various proscribed terrorist organizations for raising, receiving, and collecting funds through various illegal channels, including *hawala*. Their purpose was to fund separatists and terrorist activities in the Kashmir valley and through the funds so collected, they had entered into a larger criminal conspiracy for causing the disruption of peace in the Kashmir valley by way of pelting stones at the Security Forces, systematic burning of schools, damaging public properties, and waging war against India.

3. Accordingly, the NIA launched an investigation into the registered case bearing no. RC-10/2017/NIA/DLI under Sections 120B, 121 and 121A of the Indian Penal Code, 1860 (IPC) and Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 [UA(P) Act].

4. The Prosecution alleged that in the investigation, it

emerged that the secessionists had entered into a criminal conspiracy and adopted the strategy of instigating the general public to resort to violence and create a surcharged atmosphere for the propagation of their secessionist agenda. They engineered arson and other unlawful activities, which were executed by unruly mobs and indulged in stone pelting incidents, all of which were orchestrated by the funding received from various organisations. The secessionists were primarily dependant on the *hawala* networks and conduits for bringing money from the offshore locations to India to fulfil and fuel the abovesaid Anti-India activities in the Kashmir valley.

5. It has been alleged that a number of traders were engaged in the Line of Control (LOC) trades, having relatives across the border who were closely associated with the banned terrorist organisations, ex-militants, and their family members who were using proxy companies and used the LOC trade route for smuggling of weapons etc. The investigation allegedly established that the secessionists and separatists leaders directed the Kashmiri traders to do an under-invoicing of the goods which were imported through the LOC barter trade. The *hawala* operators based in Srinagar, New Delhi, and other parts of the country as well as abroad were being used to transfer the funds so generated.

6. It is further alleged that during the investigation it emerged that Zahoor Ahmad Shah Watali (accused no. 10 in the

main Chargesheet) was one such conduit, who was receiving foreign contributions from the Pakistan's establishment and various terrorist organisations, and then further remitting the said money to the Hurriyat leaders and secessionists. It is alleged that during the course of the investigation, it was ascertained that Zahoor Ahmad Shah Watali had also received a sum of Rs.2,26,87,639.31 as foreign remittances in his different Non-Resident (External) (NRE) accounts from 2011-2016, under the 'Other Income' Head in his proprietorship firm which was in the name and style of 'Trison International', Srinagar. He had received a sum of Rs.93,87,639.31 as foreign remittance in his NRE account maintained with Jammu and Kashmir (J&K) bank through an unknown source from 2011 to 2013. An amount of Rs.14 lakhs was remitted in the account of Acharya Sri Chander College of Medical Sciences, Jammu through NEFT against fee deposit for his son. An amount of Rs. 60 lakhs was remitted in his current account in J&K Bank, and an amount of Rs. 5 lakh was remitted in the account of M/s Trison Farms and Constructions Pvt. Ltd. The Prosecution alleged that all these foreign remittances were from unknown sources.

7. The Prosecution has alleged that during the course of the investigation, the NIA had seized incriminating documents from the house of Ghulam Mohd. Bhatt, Cashier-cum-Accountant of Zahoor Ahmad Shah Watali. It is further alleged that the investigation revealed that Zahoor Ahmad Shah Watali and the

other accused persons were routing the money through *hawala* transactions and cash couriers from fake and bogus companies floated in the United Arab Emirates (UAE).

8. In the course of the investigation, the NIA called upon Naval Kishore Kapoor/Appellant, serving him with various summons and notices under Section 160 of Code of Criminal Procedure, 1973 (Cr.P.C.) as well as Section 43F of UA(P) Act, for the purpose of answering certain questions related to the investigation which, amongst other things, pertained to his connection with Zahoor Ahmad Shah Watali and the purported transactions with him. In pursuance thereof, the Appellant appeared before the investigation agency on the concerned dates and had also sent written replies, answering the questions put to him in the notices received by him.

9. Subsequently, the NIA filed a Chargesheet on 18.01.2018, under Sections 120B, 121 & 121A of the IPC, and Sections 13, 16, 17, 18, 20, 38, 39 & 40 of UA(P) Act against the 12 accused persons (including two absconders), namely:

- *Hafiz Muhammad Saeed (A-1),*
- *Mohd. Yusuf Shah @ Salahuddin (A-2),*
- *Aftab Ahmad Shah@ Shahid-ul-Islam (A-3),*
- *Altaf Ahmad Shah @ Fantoosh (A-4),*
- *Nayeem Ahmad Khan (A-5),*
- *Farooq Ahmad Dar @ Bitta Karate (A-6),*
- *Mohammad Akbar Khanday (A-7),*
- *Raja Mehrajuddin Kalwal (A-8),*
- *Bashir Ahmad Bhat @ Peer Saifullah (A-9),*
- *Zahoor Ahmad Shah Watali (A-10),*
- *Kamran Yusuf (A-11) and;*
- *Javed Ahmad Bhatt (A-12).*

10. However, the interrogation of the Appellant continued and he was arrested on 26.07.2018. The Appellant preferred a bail application dated 30.09.2018 before the learned ASJ, during the pendency of which, the NIA filed the first Supplementary Chargesheet on 22.01.2019, arraying the Appellant as the Accused No. 13 for the offences under Section 120B IPC and Section 17 and 21 of the UA(P) Act.

11. To put it succinctly, the case of the Prosecution against the Appellant is that he was a part of a bigger conspiracy whereby, he aided, assisted, and provided a cover to hold proceeds of terrorism, which were the funds intended to be used for terrorism and cross-border transfer, for Zahoor Ahmad Shah Watali, the *hawala* conduit who remitted the terror funds to the Hurriyat leaders and stone pelters in the Kashmir Valley. The Appellant is stated to be a business partner of Zahoor Ahmad Shah Watali in the firm 'NZ International FZC', Dubai. The entire business operations, nature of partnership, and remittances received in India in the name of the said firm, has been alleged to be merely a cover, channelling funds to the tune of Rs. 2,24,87,639/- to Zahoor Ahmad Shah Watali between 2011 to 2016. It is claimed that in furtherance of the conspiracy, the Appellant entered into an agreement with Zahoor Ahmad Shah Watali through his firm M/s Trison Farms and Constructions Pvt. Ltd. for the purpose of leasing a land, for which an amount of Rs. 5.579 crores was transferred by the

Appellant to the account of Zahoor Ahmad Shah Watali.

12. It is the case of the Prosecution that the accused Zahoor Ahmad Shah Watali had, in his reply dated 30.10.2012 to the Enforcement Directorate (ED), which was in response to the notice given by ED dated 09.10.2012, declared that he owned the following companies:

1. *Trison Farms and Constructions Pvt. Ltd.*
2. *Trison International*
3. *NZ International FZC, Dubai*
4. *Yasir Enterprises*
5. *M/s 3 Y*
6. *Kashmir Veneer Industries*
7. *Trison Power Pvt. Ltd*
8. *Three Star Enterprises*

13. As per the Prosecution, the NIA, during the investigation of the present case, found that the firm, namely NZ International FZC, was based in Dubai with its operations outside India, and was a partnership concern between the Appellant, Accused Zahoor Ahmad Shah Watali, and Gaurav Kapoor; son of the Appellant. It also emerged that another firm, namely M/s NZ Farms and Resorts Pvt. Ltd., was also incorporated by the accused Zahoor Ahmad Shah Watali on 18.12.2014, wherein the Appellant is stated to be the Managing Director.

14. The Prosecution claimed that there being only one company which had operations outside India, i.e. M/s NZ International FZC, of which Appellant is a partner, therefore, the money received by the Accused No. 10 from abroad would

have been received from M/s NZ International FZC. Thus, the Prosecution alleged that money to the tune of Rs. 2,24,87,639 was brought in India through M/s NZ International FZC, and the Appellant, being an intrinsic part of channelization of money by Accused No. 10, thereby acted as a cover and participant in the entire conspiracy.

15. It is alleged that these firms/companies were merely a front/ cover to channelize funds from outside India, and that the Appellant and Accused No. 10 were looking for different avenues and alibis to bring funds from offshore locations to India.

16. It is also the case of the Prosecution that in furtherance of the conspiracy, the Appellant had entered into an agreement dated 07.11.2014 with M/s Trison Farms and Constructions Pvt. Ltd., through its Director Zahoor Ahmad Shah Watali, for the lease of a piece of land measuring 20 Kanals in Sozeith Goripara Nagbal, Budgam for a consideration of Rs. 6 Crores as a premium and an annual rent of Rs. 1,000 for 40 years. The said agreement also declared M/s Trison Farms and Constructions to be the absolute owner of the said piece of land, which was to be used for commercial purposes such as for development of resorts, hotels, restaurants, etc. Pursuant thereto, the Appellant remitted a total sum of Rs. 5.57 Crores in twenty two instalments between 2013 to 2016, to the Accused No. 10.

17. It is the case of the Prosecution that no such land was found in the name of M/s Trison Farms and Constructions, and being a non-resident entity, it could not have been the owner of the said land by virtue of Article 370 of the Constitution of India.

18. The Prosecution alleged that the Appellant has not been able to provide the source of money i.e. of Rs. 5.57 Crores, which was remitted by him in furtherance of the said agreement. Moreover, it was claimed that the said agreement was only valid for three months from the date of its attestation, however, the Appellant started remitting funds to Accused No. 10 even before this agreement was signed, and the remittances continued even after the expiry of the said agreement.

19. The funds were, as claimed by the Prosecution, mobilized by the Appellant from unknown sources and remitted to Accused No. 10 over a period of 2 years and the agreement in question was thus, a cover to bring foreign remittances to India for furthering secessionist and terrorist activities in the Kashmir valley. The Appellant has been alleged to have actively aided and assisted in these transfer of funds.

20. The Prosecution also hinged its case on the conduct of the Appellant, who, soon after the NIA issued summons on him on 13.10.2017, withdrew the entire amount of Rs. 39.71 Lakhs from his account in SBI NRI Branch, Jalandhar on 16.10.2017 and sent it to Dubai. It was claimed that this established the

mala fide and criminal intent on the part of the Appellant. Moreover, no explanation has been provided by him as to the sudden requirement of withdrawal and repatriation of money to UAE, immediately after he was directed to join the investigation. These are the broad allegations against the Appellant, levelled by the Prosecution.

21. Upon filing of the Supplementary Chargesheet against the Appellant, the learned ASJ took cognizance against the Appellant *vide* Order dated 06.02.2019, which was also challenged by the Appellant in a Criminal Appeal bearing No. 615/2019 before this Court, and was dismissed *vide* Judgement dated 28.05.2019.

22. Thereafter, the bail application of the Appellant came to be dismissed by the learned ASJ on 19.08.2019. Aggrieved thereby, the Appellant has preferred the present Appeal.

23. It may also be noted that the learned ASJ has, *vide* Orders dated 16.03.2022 and 11.04.2022, ordered that the Charges be framed against the Appellant under Section 17 of the UA(P) Act and 120B of IPC. The Charges were formally framed on 10.05.2022, however, the Appellant was discharged for the offence punishable under Section 21 of the UA(P) Act.

SUBMISSIONS ON BEHALF OF THE APPELLANT

24. Mr. Lakshay Dhamija, learned counsel for the Appellant, submitted that the learned ASJ failed to consider catena of recent decisions by the Supreme Court, whereby, the Supreme

Court has emphasised the need to release the undertrials on bail where the Prosecution fails to conclude trial for years together. He submitted that the Appellant deserves to be enlarged on bail, specifically when the material collected during investigation is incongruous with the allegations made by the Prosecution.

25. To point out the deficiencies, the learned counsel submitted that the NIA failed to establish that the Appellant was a part of the conspiracy or knowingly aided and abetted the flow of funds to the Accused No. 10 for channelizing the same to the secessionists and separatists leaders/groups in the Kashmir valley. One of the assertions against the Appellant, he submitted, pertains to an agreement dated 07.11.2014 between the Appellant and M/s Trison Farms and Constructions Pvt. Ltd., through Accused No. 10, for land admeasuring 20 Kanals in Sozeith, Goripara Nagbal, Budgam. In this respect, the Prosecution has not been able to *prima facie* show that the said agreement itself was a sham transaction or merely a cover for the Accused No. 10 to bring in foreign remittances from unknown sources to India. Therefore, the accusation made by the NIA is baseless and without any material to substantiate the same.

26. Learned counsel submitted that the Prosecution has misplaced its reliance on the fact that since one company was situated abroad, therefore, it can be presumed that the foreign remittances received by Zahoor Ahmad Shah Watali came from

NZ International FZC, which is in Dubai. It was submitted that the Appellant could not obtain the bank statement of NZ International FZC, as he had been arrested before he could procure the same. Moreover, the Respondent made no independent efforts to get the said bank statements. The Prosecution also alleged the sources of funds transferred to be unknown, and had invoked Section 21 of UA(P) Act, however, the Appellant has been discharged of the same by the learned ASJ *vide* Order dated 16.03.2022.

27. Learned counsel for the Appellant further submitted that the NIA also overlooked key documents, including an irrevocable Power of Attorney dated 09.12.2006, executed by the two sons of the Accused No. 10 as jointly-authorized partners of M/s Trison Farms in favour of M/s Trison Farms and Constructions Pvt. Ltd., and a partnership deed dated 13.12.2006. These documents show that the family members of the Accused No. 10 are partners in M/s Trison Farms, and had executed an irrevocable Power of Attorney in favour of M/s Trison Farms and Constructions Pvt. Ltd., through Accused No. 10, authorizing him to act for the development of the land in question. Based on these documents, it is evident that the Accused No. 10, through M/s Trison Farms and Constructions Pvt. Ltd., was duly authorized to execute transactions regarding the land. Therefore, the accusation that no such land existed in favour of M/s Trison Farms and Constructions is *prima facie*

false.

28. The learned counsel for the Appellant submitted that the Supplementary Chargesheet failed to introduce any fresh material or evidence, instead, it merely included a reconsideration and re-appreciation of evidence, which had already been collected at the time of filing of the main Chargesheet. Furthermore, there was no cogent reasoning or justification provided so as to explain why the Appellant, initially designated as PW- 28 in the main Chargesheet, was subsequently arraigned as an accused in the Supplementary Chargesheet. He submitted that the learned ASJ erred in overlooking the absence of any new incriminating material to support the change in position of the Appellant in the Supplementary Chargesheet.

29. The learned counsel submitted that the Supplementary Chargesheet, even if accepted at its face value, fails to substantiate the commission of any offence by the Appellant under Section 17 of UA(P) Act and Section 120B of IPC. He submitted that the alleged secessionist activities, as outlined in the Supplementary Chargesheet, cannot be classified as terrorist activities under Chapter IV and V of UA(P) Act. Moreover, these alleged activities fall outside the ambit of provisions of Section 43D(5) of the UA(P) Act, as the Prosecution has failed to demonstrate any overt act or direct link connecting the alleged actions to the defined parameters of terrorism under the

said Act, thereby rendering the invocation of these provisions legally unsustainable.

30. He submitted that the remittances in question were processed through legal banking channels without any attempt to conceal or misrepresent the origins of the funds as the Appellant had fully disclosed the source of these funds.

31. He further submitted that in a business partnership, the Appellant and the Accused No. 10 had entirely separate business interests and only shared 50% expenses of the firm. The only bank account in the name of NZ International FZC was an Account in the Ajman Branch, UAE, which was not operated by the Accused No. 10. The limited role of the Accused No. 10 was taking orders in the name of NZ International FZC and in return, made supplies to receive commissions. Moreover, the NIA had made an error in assuming that the business income of the Accused no. 10 was solely from NZ International FZC. The remittances of the Accused no. 10 were income from businesses other than the warehouse operated by the NZ International FZC as the warehouse only provided the Accused No. 10 with a formal commercial establishment address to operate from.

32. The learned counsel for the Appellant submitted that the learned ASJ also failed to take note of the fact that the Income Tax Returns of the Accused No. 10 cannot be a ground to establish conspiracy between the Appellant and the Accused

No. 10, as the said Income Tax Returns filed by Accused No. 10 with the Income Tax Authorities are his returns in his personal name, therefore, any concealment of the finances in the said returns is an inconsequential proof to allege a conspiracy between the Appellant and the Accused No. 10.

33. He emphasized that M/s NZ Farms and Resorts Pvt. Ltd. was established for entirely lawful and legitimate commercial purposes. The learned counsel vehemently urged that the allegation that the company served as a conduit for terror financing is not supported by any evidence of actual business transactions tied to illegal activities. The NIA has failed to substantiate its claim with proof that the company/firm was ever involved in any transaction where the Appellant provided funds to the Accused No. 10 for the alleged purpose of facilitating terrorist acts. Furthermore, the company was unable to undertake any business activity solely because the agreement dated 07.11.2014, upon which the company's operational plans depended, did not materialize. The reciprocal obligations outlined in the agreement, which required performance by both the Appellant and Accused No. 10, were never fulfilled.

34. He submitted that to grant bail under Section 43D (5) of UA(P) Act, mere *prima facie* opinion of the court is not sufficient, but reasonable grounds must exist to believe the accusations against the person accused of the offences of terrorism punishable under Chapter IV and VI of the UA(P) Act

to be *prima facie* true. Learned counsel further submitted that the expression 'reasonable grounds' means "substantial probable cause" and more than a *prima facie* case and entire evidence on record including material produced by the accused must be considered by the Court while deciding the bail application. In support of these contentions, reliance was placed on the decisions of the Supreme Court in ***Union of India vs Ratan Mallik alias Habul,*** (2009) 2 SCC 624, ***Cheena Boyanna Krishna Yadav vs State of Maharashtra & Anr.,*** (2007) 1 SCC 242, ***Union of India vs Shiv Shankar Kesari,*** (2007) 7 SCC 798, ***Sudesh Kedia vs Union of India,*** (2021) 4 SCC 704 and ***NIA vs. Zahoor Ahmad Shah Watali,*** (2019) 5 SCC 1.

35. Learned counsel further submitted that the standard of scrutiny to determine *prima facie* correctness of accusations levelled against an accused while considering bail under Section 43D (5), is much higher than at the stage of framing of Charges, and while doing so, the documents which are legally admissible under Section 34 of the Evidence Act, 1872 can be relied upon at the stage of consideration of bail. Moreover, he submitted, at the time of taking cognizance, the Court has to consider only the averments made in the Chargesheet. Reliance for which was placed on the decisions in ***Rojen Boro vs NIA,*** (2016) 4 GLT 803, ***Central Bureau of Investigation vs V.C. Shukla,*** (1998) 3 SCC 410***, Manohar Lal Sharma vs Union of India &Ors,.***

(2017) 11 SCC 731, ***Rashmi Kumar vs Mahesh Kumar Bhada,*** (1997) 2 SCC 397, ***State of Bihar vs Rajendra Agrawalla,*** (1996) 8 SCC 164 and ***Gurwinder Singh vs State of Punjab and Ors.,*** 2024 INSC 92.

36. He submitted that the learned ASJ wrongly relied on ***Naval Kishore v NIA,*** (2019) SCC OnLine Del 8711, wherein it was specifically stated that the observations made were only for the purpose of grounds urged with respect to the cognizance taken by the learned Trial Court and not an expression on merits of the matter before the learned Trial Court.

37. He further submitted that the learned ASJ erred by failing to appreciate that the judicial custody of the Appellant was unwarranted, as the Respondent has not alleged that the Appellant poses a flight risk or that he would tamper with the evidence, particularly when the evidence is documentary in nature and already in the possession of the Prosecution. None of the witnesses are known to the Appellant, therefore, there is no risk that he would influence the witnesses or tamper with evidence. Furthermore, the Appellant has demonstrated good faith by participating in the investigation on 26 separate occasions. Learned counsel also strenuously argued that the Appellant also has a house in Jalandhar, Punjab and can stay in India, and as such does not pose a flight risk.

38. He further submitted that the Appellant has severe medical conditions, including hypertension, diabetes, and a

history of paralytic attacks and these conditions had also necessitated his hospitalization at Dr. RML Hospital, New Delhi, during both the police and judicial custody on multiple occasions. Moreover, the Appellant is 71 years of age and has already endured over six and a half years of the incarceration. The learned counsel highlighted that keeping in view that no list has been furnished by the Prosecution as to how many witnesses remain to be examined, as some 226 witnesses are yet to be examined even after dropping certain number of witnesses, and with only 21-22 witnesses having been examined, there is not a remotest possibility of the trial concluding in the near future. In these circumstances, he submitted, the Bail be granted to the Appellant, who is ready to abide by any conditions imposed on him by this Court while granting him regular bail.

39. The learned counsel has relied on the following judgements in support of his contentions:

- ***Jahir Hak vs The State of Rajasthan*** (2022) SCC Online SC 441
- ***Ashim vs National Investigation Agency*** (2022) 1 SCC 695
- ***Shoma Kanti Sen vs The State of Maharashtra and Ors.*** (2024) SCC OnLine SC 498
- ***V. Senthil Balaji vs The Deputy Director, Directorate of Enforcement*** 2024 SCC OnLine SC 2626.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

40. Controverting the submissions made on behalf of the Appellant, the learned Senior Counsel for the Respondent, Mr. Siddharth Luthra, at the outset, submitted that once the Charges have been framed, the test laid down in the Section 43D(5) and

(6) of the UA(P) Act is to be applied in the context of the allegations being *prima facie* true against the Appellant. The bail, under such circumstances, cannot be granted unless the Appellant is able to discharge the onus under Section 43D during the course of the trial by way of cross-examining Prosecution witnesses or by leading defence evidence. Charges have been framed against the Appellant for the offences punishable under Sections 120B of IPC and 17 of UA(P) Act. Keeping in view that Section 43D (5) & (6) are attracted, and since the order on Charge remains unchallenged by the Appellant, in such circumstances, the Appellant is not entitled to bail.

41. The learned Senior Counsel submitted that the Appellant was intrinsically linked to the Accused No. 10 and has actively participated in the conspiracy with him, whose order of Regular bail was set aside by the Supreme Court *vide* Order dated 02.04.2019 in the case of ***NIA vs. Zahoor Ahmad Shah Watali*** (supra). He contended that the said judgment discusses the incriminating material against the Accused No. 10, which also implicates the Appellant. Considering the said fact alone, there is no basis to grant bail to the Appellant at this stage.

42. Learned Senior Counsel submitted that the accused Zahoor Ahmad Shah Watali, during the FEMA proceedings, had disclosed about the companies owned by him, of which NZ International FZC was stated to be situated abroad, being in

Dubai. It was also declared by him that the foreign remittances received by him from Dubai were from NZ International FZC. In this regard, he referred to Exhibit D137(f).

43. He submitted that the evidence on record reflects the close business relations between the Appellant and the Accused No. 10. The record reveals that the Appellant was a director in NZ Farms & Construction Pvt. Ltd. and a licensee in NZ International-FZC along with the Accused No. 10. Reference was made to the documents D212, D218, D203, D224/10 and other documents.

44. He further submitted that according to the Financial Analysis Report dated 12.12.2018, [AD-86], various companies of the Accused No. 10 (including those in which the Appellant was a director) were mere fronts and no actual business was being carried out. The Order on Charge dated 16.03.2022 records the discrepancies noted by this Court *vide* Order dated 28.05.2019 in Appeal against the Order of Cognizance with respect to the purported agreement dated 07.11.2014 between the Appellant and M/s Trison Farms and Construction Pvt. Ltd. The same was verified by perusing the land records furnished by the Tehsildar in the documents AD-3 & AD-4 as well as the purported agreement.

45. Learned Senior Counsel relied on three factors to establish that the purported agreement was merely a front to transfer unaccounted funds from unknown sources in Dubai into

the accounts of the Accused No. 10, to be used for promoting secessionist and terrorist activities in Kashmir valley. First, the agreement falsely states that M/s Trison Farms & Constructions Pvt. Ltd. was the absolute owner of the alleged property leased to the Appellant, which could not have been the case as the land records reflect that some of the properties of the agreement in question, were either mortgaged to the J&K Bank or were mutated in the name of the Accused No. 10, pursuant to the Gift Deeds dated 01.01.2015 and 11.09.2015, which deeds were executed much after the date of the agreement. Therefore, M/s Trison Farms & Constructions Pvt. Ltd. could not have been the absolute owner of the properties so leased..

46. Secondly, learned Senior Counsel submitted, the agreement was notarized in the name of Ghulam Mohd., who was neither a party to the agreement nor had any relation to the subject-matter of the transaction. Thirdly, the land was agricultural, however, the agreement entered into was for commercial purposes; of establishing, promoting and running the business of Hotels and Businesses. Moreover, there was no conversion of land either before entering the agreement dated 07.11.2014 and even till date. Despite the agreement pertaining to the year 2014 and the Chargesheet having been filed in 2017, not even an application for change of use of land had been made or any activity in furtherance of the same has been undertaken. Without change of title, he submitted, the land could not have

been leased for commercial purposes.

47. He contended that the Appellant was not able to show the source of funds since he is neither an income tax payee nor has he shown any source of money so transmitted by him to the Accused No. 10. Furthermore, learned Senior Counsel, while referring to Exhibit D212, that is, production cum receipt memo dated 17.11.2017 pertaining to vouchers of purchase of gold by the Appellant, submitted that the Appellant did not produce any stock register, inventory or any document including the source of funds for the purchase of gold, which he has claimed to be purchased/sold by the Appellant to generate the said funds between the years 2013-14. He further submitted that the amount transferred on the pretext of consideration of the purported agreement was more valuable than the gold claimed to be sold for completing the transaction of purchase of land. The purchase value of gold was estimated to be roughly Rs. 3.3 Crores, yet no source has been provided for the remaining 2.2 Crores (approx.). The Appellant has also not been able to explain the source of money that was utilized to purchase the gold.

48. The learned Senior Counsel drew our attention to the Document AD-87, which is the Production cum Receipt Memo dated 09.11.2018, to contend that the conduct of the Appellant is to be noted, who after the issuance of summons/notice to him, withdrew the entire amount from his account in SBI NRI

Branch, Jalandhar and sent outward remittances to Dubai, which establishes *malafide* intention and he has not been able to explain the sudden requirement of withdrawal of the same.

49. It was also contended that the Appellant has claimed that the money was sent to the Accused No. 10 in anticipation of an agreement for lease, however, it was submitted by the learned Senior Counsel that such a large amount of money, without execution of any lease, could not have been sent merely in anticipation.

50. Learned Senior Counsel, drawing our attention to the Order dated 09.10.2019 passed by the Adjudicating Authority, PMLA, submitted that there was a deep rooted conspiracy and Zahoor Ahmad Shah Watali was involved in money laundering and his properties are covered under the proceeds of crime.

51. Learned Senior Counsel submitted that the sheet of paper [D-132(a)/23] seized from the house of the accountant of the Accused No. 10, Mr. Ghulam Mohd. Bhatt *prima facie* revealed the foreign contributions received and expenditures made by the Accused No. 10 between the years 2015-2016. The said entries revealed that the Accused No. 10 not only received but also transferred certain amounts to other co-accused persons, including Yasin Malik (who pled guilty and has been sentenced by the learned ASJ), Shabir Shah (Accused No. 16) and Hafiz Saeed (Accused No. 1) and most importantly, Iqbal Cheema, the First Secretary of the High Commission of Pakistan on

20.10.2016, which was verified through document that is AD-10. Furthermore, when the same document had come up for consideration before the Supreme Court in ***NIA vs. Zahoor Ahmad Shah Watali*** (supra), the Supreme Court found force in the argument of the learned Attorney General that the issue of admissibility and credibility of the material and evidence presented by the investigating agency would be a matter of trial.

52. Thus, he submitted, in view of the foregoing, the ingredients of Section 17 UA(P) Act & 120B of the IPC are *prima facie* made out against the Appellant. The Appellant has not been able to show from the evidences collected by NIA that no case against him has been made out. The Appeal, being meritless, therefore, needs to be dismissed.

ANALYSIS & FINDINGS

53. We have considered the submissions advanced on behalf of the Appellant and by the learned Senior Counsel appearing on behalf of the Respondent. With their assistance, we have perused the copies of the Chargesheet, the statement of the protected witnesses, as well as the record. Apart from the above, we have also perused the judgements relied upon by both the sides in support of their contentions.

54. To start with, we may note that the learned counsel for the Appellant has primarily submitted that the stringent bail conditions under Section 43D (5) of the UA(P) Act could be justified only if a swift trial takes place, however, in the present

case, the Appellant has been languishing in jail since the date of his arrest, being 26.07.2018, and there is no certainty as to when the trial shall be concluded in the future. He submitted that even otherwise, the restrictions as provided under Section 43D (5) of UA(P) Act per se do not oust the powers of the Constitutional Court to grant bail on the ground of violation of Article 21 of the Constitution of India and the rigors of the provision do not apply when the personal liberty of an undertrial is at stake. In support thereof, the learned counsel placed reliance on the following judgments:

- ***The National Investigation Agency vs Areeb Ejaz Majeed,*** 2021 SCC OnLine BOM 239
- ***The National Investigation Agency vs Areeb Ajaz Majeed*** SLP(Crl) No. 6166/2021, Order dated 27.08.2021
- ***Union of India vs K.A. Najeeb*** (2021) SCC Online SC 50;
- ***Javed Gulam Nabi Sheikh vs State of Maharashtra &Ors.*** (2024) 9 SCC 813;
- ***Sheikh Javed Iqbal vs State of Uttar Pradesh,*** (2024 INSC 534) (2024) 8 SCC 293;
- ***Manish Sisodia vs Directorate of Enforcement,*** (2023) SCC OnLine Del 3770;
- ***Arvind Kejriwal vs Central Bureau of Investigation,*** (2024) SCC OnLine SC 2550

55. In response, Mr. Siddharth Luthra submitted that the Prosecution has relied upon 242 witnesses in total, out of which the Prosecution will drop 92 witnesses and 21-22 witnesses have already been examined, thus, the trial is underway. He, therefore, submitted that the restrictions under the Statute as well as powers exercisable under Constitutional jurisdiction, can be well harmonised in the present case, as it is not a case of

delay in launching the Prosecution's case and leading with the trial of the Appellant.

56. The learned Senior Counsel in reference to the aforesaid submission, drew our attention to the two affidavits dated 15.10.2022 and 06.11.2024 filed on behalf of the Respondent, and submitted that in the said affidavits, the entire track record of the Prosecution's case *vis-a-vis* filing of the Chargesheet, framing of Charge and examination of Prosecution witnesses are set out in detail, from where it can be verified that the trial has been fast tracked and is being taken up at very short dates of hearings. Therefore, there is no merit in the argument raised on behalf of the Appellant that he be enlarged on bail, merely due to his incarceration, which infringes his valuable right under Article 21 of the Constitution of India.

57. While placing reliance on the case of ***Gurwinder Singh*** (supra), he vehemently submitted that the facts and circumstances in the present case are akin to the case of ***Gurwinder Singh*** (supra), as in that case, the bail was rejected in view of facts and circumstances of the case and the trial was on going and 22 Prosecution witnesses had been examined. He further submitted that the other judgments cited on behalf of the Appellant are not only distinguishable on the facts from the present case, but also in some of the cases, even the Charges were yet to be framed at the time of hearing of the bail applications.

58. He submitted that the facts in the present case are peculiar which, therefore, need to be considered on their own merits. He also submitted that the Appellant has unsuccessfully challenged the Order passed by the learned ASJ taking cognizance in the present case, however, he has not assailed the Order of framing of Charge under Section 17 of UA(P) Act and 120-B of IPC against him. Thus, he submitted, the parameters under Section 43D(5) of the UA(P) Act have to be met in the present case for consideration of the Appellant's plea for bail, especially, the rigours being higher when the Charges have already been framed.

59. To appreciate the aforesaid plea of the parties, it would be apposite to deal with Section 43D of UA(P) Act. UA(P) Act provides special procedure to deal with terrorists activities, and the Section 43D lays down stringent provision for grant of bail. For ready reference, it would be appropriate to reproduce the relevant portion of Section 43D of the UA(P) Act, is as under:

> *"[**43D. Modified application of certain provisions of the Code***
>
> *xxxx xxxx xxxx*
>
> *(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:*
>
> *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.*
> *(6) The restrictions on granting of bail specified in subsection (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.*
>
> ***(Emphasis Supplied)***

60. What flows from the provisions so extracted above is that the same sets a narrow limit for the court's discretion to grant bail. The *proviso* provides that the accused shall 'not' be released on bail if the Court is of the opinion that there are reasonable grounds, upon perusal of the case diary or the final report submitted by the investigation agency, to believe that the allegations against the accused are *prima facie* true.

61. In this regard, we may refer to various decisions wherein the provision under Section 43D has been examined by the Supreme Court as well as Coordinate Benches of this Court. Recently, the Supreme Court in the case of ***Sheikh Javed Iqbal*** (supra), culled out the principles for grant of bail and observed that the under trial has a fundamental right to a speedy trial which is traceable to Article 21 of the Constitution of India. Further, the Supreme Court, while referring to ***Javed Gulam Nabi Sheikh*** (supra) and other of its earlier decisions, observed as under:

> *"42. This Court has, time and again, emphasised that right to life and personal liberty enshrined under Article 21 of the Constitution of India is overarching and*

> *sacrosanct. A constitutional court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-undertrial under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part."*

62. It was also observed by the Supreme Court as under:

> *"42. (continued)* ***In the given facts of a particular case, a constitutional court may decline to grant bail.*** *But it would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb[1] being rendered by a three-Judge Bench is binding on a Bench of two Judges like us."*
>
> ***(Emphasis supplied)***

63. It further observed:

> *"23. It is true that the Appellant is facing charges under Section 489B IPC and under Section 16 of the UAP Act which carries a maximum sentence of life imprisonment, if convicted. On the other hand, the maximum sentence under Section 489C IPC is 7 years.* ***But as noticed above, the trial is proceeding at a snail's pace. As per the impugned order, only two witnesses have been examined. Thus, it is evident that the trial would not be concluded in the near future****."*
>
> ***(Emphasis supplied)***

64. Notably, in another decision of the Supreme Court in ***Zahoor Ahmad Shah Watali*** (supra), which arose from the same Registered Case by NIA as the present matter, the

Supreme Court propounded the general factors on the anvil of which the bail applications are to be considered:

> *"21. Before the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding an application for bail, to wit:*
>
> *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence,*
> *(ii) the nature of gravity of the charge,*
> *(iii) the severity of the punishment in event of conviction,*
> *(iv) the danger of accused absconding, or fleeing if released on bail*
> *(v) character, behaviour, means, position and standing of accused*
> *(vi) likelihood of offence being repeated*
> *(vii) reasonable apprehension of witness being tampered with and*
> *(viii) danger of course of justice being thwarted by grant of bail (State of U.P. v. Amarmani Tripathi)"*

65. Further, the Supreme Court in ***Gurwinder Singh*** (supra) has discussed the decision in ***Zahoor Ahmad Shah Watali*** (supra) in detail and has laid down the parameters by which bail applications under Section 43D(5) of UA(P) Act are to be adjudged. The accused in the said case had preferred an Appeal to the High Court of Punjab & Haryana to assail the decision of his bail application by the Trial Court, The High Court considering the seriousness of the offences and considering that the protected witnesses were yet to be examined, as in the present case, rejected the bail application of the accused. The Supreme Court while affirming the decision of the Punjab & Haryana High Court, apart from other factors, also discussed the scope of Section 43D(5) of UA(P) Act and observed as under:-

27. The Courts are, therefore, burdened with a sensitive task on hand. In dealing with bail applications under UAP Act, the Courts are merely examining if there is justification to reject bail. The 'justifications' must be searched from the case diary and the final report submitted before the Special Court. The legislature has prescribed a low, 'prima facie' standard, as a measure of the degree of satisfaction, to be recorded by Court when scrutinising the justifications [materials on record]. This standard can be contrasted with the standard of 'strong suspicion', which is used by Courts while hearing applications for 'discharge'. In fact, the Supreme Court in Zahoor Ahmad Watali has noticed this difference, where it said: (SCC p.24 para 23)

> *"23….In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act."*

66. Noting the elaborate guidelines laid down by it in ***Zahoor Ahmad Shah Watali*** (supra), the Supreme Court in ***Gurwinder Singh*** (supra) expounded the following propositions and as also a twin-prong test, relevant extracts whereof are reproduced as under:

> *"29. On a textual reading of Section 43 D(5) UAP Act, the inquiry that a bail Court must undertake while deciding bail applications under the UAP Act can be summarised in the form of a **twin-prong test**:*
>
> *(1) Whether the test for rejection of the bail is satisfied?*
>
> *1.1 Examine if, prima facie, the alleged "accusations" make out an offence under Chapter IV or VI of the UAP Act*
>
> *1.2 Such examination should be limited to case diary and final report submitted under Section 173 CrPC;*
>
> *(2) Whether the accused deserves to be enlarged on bail in light of the general principles relating to grant*

*of bail under Section 439 CrPC **(''tripod test'')**? On a consideration of various factors such as nature of offence, length of punishment (if convicted), age, character, status of accused etc., the Courts must ask itself:*

2.1 Whether the accused is a flight risk?

2.2 Whether there is apprehension of the accused tampering with the evidence?

2.3 Whether there is apprehension of accused influencing witnesses?

30. The question of entering the ''second test'' of the inquiry will not arise if the ''first test'' is satisfied. And merely because the first test is satisfied, that does not mean however that the accused is automatically entitled to bail. The accused will have to show that he successfully passes the ''tripod test''."

Test for Rejection of Bail : Guidelines as laid down by Supreme Court in Watali's Case

31. In the previous section, based on a textual reading, we have discussed the broad inquiry which Courts seized of bail applications under Section 43D(5) UAP Act r/w Section 439 CrPC must indulge in. Setting out the framework of the law seems rather easy, yet the application of it, presents its own complexities. For greater clarity in the application of the test set out above, it would be helpful to seek guidance from binding precedents.

32. In this regard, we need to look no further than Watali's case which has laid down elaborate guidelines on the approach that courts must partake in, in their application of the bail limitations under the UAP Act. On a perusal of paragraphs 23 to 24 and 26-27, the following 8-point propositions emerge and they are summarised as follows:

*32.1 **Meaning of ''Prima facie true'': (Watali case, SCC p.24, para 23)**:*

"23.....On the face of it, the materials must show the complicity of the accused in commission of the offence. The materials/evidence must be good and sufficient to establish a given fact or chain of facts constituting the stated offence, unless rebutted or contradicted by other evidence."

*32.2 **Degree of satisfaction at pre-chargesheet, post chargesheet and post-charges compared: (Watali***

case, SCC p.28, para 26):

"26..... Once charges are framed, it would be safe to assume that a very strong suspicion was founded upon the materials before the Court, which prompted the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused, to justify the framing of charge. In that situation, the accused may have to undertake an arduous task to satisfy the Court that despite the framing of charge, the materials presented along with the charge-sheet (report under Section 173 CrPC), do not make out reasonable grounds for believing that the accusation against him is prima facie true. Similar opinion is required to be formed by the Court whilst considering the prayer for bail, made after filing of the first report made under Section 173 of the Code, as in the present case."

32.3 ***Reasoning, necessary but no detailed evaluation of evidence: Watali case, SCC p.27 para 24:***

"24.....The exercise to be undertaken by the Court at this stage—of giving reasons for grant or non-grant of bail—is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required to be done at this stage."

32.4 ***Record a finding on broad probabilities, not based on proof beyond doubt: Watali case, SCC p.27 para 24:***

"*24.... The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."*

32.5 ***Duration of the limitation under Section 43D(5): Watali case, SCC p.27 para 26:***

"26.... The special provision, Section 43-D of the 1967 Act, applies right from the stage of registration of FIR for the offences under Chapters IV and VI of the 1967 Act until the conclusion of the trial thereof."

32.6 ***Material on record must be analysed as a 'whole'; no piecemeal analysis: Watali case, SCC p.28 para 27:***

"27..... The totality of the material gathered by the investigating agency and presented along with the report and including the case diary, is required to be

reckoned and not by analysing individual pieces of evidence or circumstance."

32.7 Contents of documents to be presumed as true: Watali case, SCC p.28 para 27:

"27..... The Court must look at the contents of the document and take such document into account as it is."

32.8 ***Admissibility of documents relied upon by Prosecution cannot be questioned: Watali case, SCC p.24 & 28 paras 23 & 27:***

"23..... The materials/evidence collected by the investigation agency in support of the accusation against the accused in the first information report must prevail until contradicted and overcome or disproved by other evidence.

27..... In any case, the question of discarding the document at this stage, on the ground of being inadmissible in evidence, is not permissible."

67. It would also be apposite to note that a Review Petition against the judgement in ***Gurwinder Singh*** (supra) was preferred, and the Supreme Court in its Order dated 16.07.2024 in ***(2024) SCC OnLine SC 177*** observed that their decision is based on the facts and circumstances as unfolded. The observations read as under:

> "*1) This Review Petition has been filed seeking to review Judgment dated 07.02.2024 both on facts and law. As facts have been duly taken note of, we do not find any reason to interfere with the Judgment passed. On the question of law, reliance has been placed on the decisions of this Court in KA Najeeb v. Union of India, (2021) 3 SCC 713 and Vernon v. State of Maharashtra, (2023) SCC OnLine SC 885.* ***We make it clear that our decision is to be construed on the facts dealt with by us***.
>
> *2) Accordingly, the Review Petition stands dismissed."*
>
> ***(emphasis supplied)***

68. In the case of ***Sheikh Javed Iqbal*** (supra), the Supreme Court had granted bail to the accused and had distinguished ***Gurwinder Singh*** (supra). The Court, during the course of the proceedings had also enquired from the parties as to the total number of witnesses and witnesses that remain to be examined. The relevant observations thereto are as below:

> *"18. As per the impugned order, evidence of only two witnesses have been recorded. In the course of hearing, the Bench had queried learned counsel for the parties as to the stage of the trial; how many witnesses the Prosecution seeks to examine and evidence of the number of witnesses recorded so far. Unfortunately, counsel for either side could not apprise the Court about the aforesaid. On the contrary, the learned state counsel sought for time to obtain instructions."*

69. It further held as under:

> *"...but in Gurwinder Singh, the trial was already underway and that twenty two witnesses including the protected witnesses have been examined. It was in that context, the two Judge Bench of this Court in Gurwinder Singh observed that mere delay in trial pertaining to grave offences cannot be used as a ground to grant bail."*

70. In the case of ***Sudesh Kedia*** (supra), the Supreme Court, while considering the grant of bail under Section 43-D(5) of the UA(P) Act, stated that the Court must examine the entire material on record for the purpose of satisfying itself whether a *prima facie* case is made out against the accused or not. In ***Rojen Boro*** (supra), it was outlined that the Court shall examine the facts and circumstances of each case while granting bail.

71. In this background, the position of law stands re-affirmed that an accused is entitled to the speedy trial as he has a Fundamental Right to the same as well as right to life and personal liberty enshrined in Article 21 of the Constitution of India and the Court is not deprived of the power to grant bail even in special enactments. If the alleged offence is a serious one, it is all the more necessary that the Prosecution should ensure that the trial is expedited and concluded at the earliest. Also, when a trial is prolonged, it is not open to the Prosecution to oppose the bail application. However, in particular facts of a given case, the Constitutional Court may also decline to grant bail.

72. The position is also settled that the person accused of offences under UA(P) Act shall not be released on bail if it appears that there are reasonable grounds to believe that the allegations against an accused are *prima facie* true. Specifically, in cases where the Charges have already been framed, the rigours are stricter. As far as the twin prong test is concerned, the first prong pertains to whether the test for rejection of bail are sufficient and satisfied. The other prong being the satisfaction of the triple test, on the factors such as flight risk, influencing of witness and tampering of evidence.

73. The present case ought to be considered in the backdrop of the aforementioned binding precedents, guidelines, observations, and with the facts and circumstances of the

present case. We have perused the affidavits filed on behalf of the Respondent. In the affidavit dated 06.11.2024, it has been stated on behalf of the Respondent that there is no delay in the trial on the part of the Prosecution. On 16.03.2022, Charges were framed against 15 accused persons including 2 absconders, and were modified on 11.04.2022. One of the accused namely, Yaseen Malik, pleaded guilty on 18.04.2022 for all the offences mentioned in the Charge Order, and *vide* Order dated 19.05.2022, he has been convicted for the offences punishable under Sections 120-B, 121, 121A of IPC, 13 of UA(P) Act read with Section 120-B IPC, 15 of UA(P) Act read with 120-B IPC, 17, 18, 20, 38 and 39 of UA(P) Act. He has been sentenced to life imprisonment *vide* the Order dated 25.05.2022. The admission/denial of documents was undertaken and the case was set for examination of Prosecution witnesses on 01.11.2022. Since then, 21-22 witnesses have been examined and the last witness was examined on 19.09.2024. The learned Senior Counsel has categorically submitted that 92 witnesses out of the total 242 witnesses are to be dropped by the Prosecution, and the remaining witnesses are yet to be examined. However, he submitted that recently an issue has come up that whether the further trial of the co-accused Abdul Rashid Sheikh, who has now been elected as a MP, will be held by the Special Judge, NIA Court or by the Special Court for MP/MLAs, for which further directions are awaited. From a

perusal of the affidavit, it is clear that the trial, being underway, was taken up twice/thrice in a week and had been fast tracked.

74. Now, coming to the case of the Prosecution against the Appellant that he, in conspiracy with the Accused No. 10, and provided a cover for him to bring in foreign remittances in India. Accused No. 10, Zahoor Ahmad Shah Watali is alleged to be involved in unlawful acts and terror funding with the other accused persons and to have acted as a conduit for transfer of funds received from Accused No. 1, Hafiz Muhammad Saeed, ISI, Pakistan High Commission, New Delhi, as well as funds received from a source in Dubai, to the Hurriyat Leaders/secessionists and terrorists in furtherance of waging war against the Government of India by stone pelting, burning of schools, etc., and the secession of Jammu and Kashmir from the Union of India.

75. The Prosecution claimed that the said source of funds from Dubai is linked with the Appellant by means of the partnership concern that is NZ International FZC, with the Accused No. 10. The Appellant is also connected with Accused No. 10 by way of the agreement entered into by them to provide cover for the foreign remittances so received and the bogus firms/companies incorporated in pursuance of raising funds through M/s Trison Farms and Constructions Pvt Ltd, etc. and M/s NZ Farms and Resorts. It also emerged that no business activity had been undertaken by the M/s NZ Farms and Resorts

and NZ Farms and Constructions Ltd, which had been incorporated by Zahoor Ahmad Shah Watali and the Appellant.

76. The Prosecution claims that an agreement dated 07.11.2014 was entered into between the Appellant and M/s Trison Farms and Constructions for the lease of a piece of land in Nagbal, Budgam for a premium of Rs. 6 Crores and annual rent of Rs. 1,000/-, and the said land was to be used for commercial purposes. The Appellant, in pursuance thereto, remitted Rs.5.57 Crores in 22 instalments during the period from 2013 to 2016. However, as per the Prosecution and the material collected by it, it was claimed that no such land existed in the name of M/s Trison Farms and Constructions, which was held to be the absolute owner by virtue of the abovementioned agreement. It was also contended that no land existed in the name of M/s Trison Farms and Constructions Pvt Ltd as per the balance sheets of the said company for the Assessment Years 2011-2012 to 2016-2017, reference in this regard was made by the learned Senior Counsel to the document D211, which is a letter from the Income Tax Office, Anantnag containing income tax return details for the last 6 years of Zahoor Ahmad Shah Watali.

77. The Appellant has relied on the Partnership Deed dated 13.12.2006 of M/s Trison Farms and an irrevocable Power of Attorney (PoA) dated 09.12.2006 executed by M/s Trison Farms in favour of M/s Trison Farms and Constructions Pvt.

Ltd. to contend that the owners of the land entered into the said partnership, which then executed the PoA. It was contended that based on the PoA, the lease was executed by M/s Trison Farms and Construction Pvt. Ltd. with the Appellant. The learned counsel for the Appellant contended that the description of M/s Trison Farms & Construction Pvt. Ltd. as owner of the land, was a mere mistake and no criminal intent can be attributed to the Appellant by the same.

78. On the other hand, it was submitted by the learned Senior Counsel for the Respondent that these documents were not produced before the Investigation Officer during the investigation of the present case. He submitted that the manner in which these documents have been executed appear to be suspicious.

79. The above contention of the learned counsel for the Appellant would be a matter of trial and his defence in the same. Presently, in face of the lease deed, which is shrouded with suspicion, it cannot be said that the Prosecution has not made out a *prima facie* case against the Appellant.

80. The Appellant had claimed the source of the said money to be the amount received by selling certain gold jewellery. However, the Prosecution found the same not to be a satisfactory explanation as to its source, in view of certain discrepancies such as the amount obtained from sale of gold being less than the amount remitted by the Appellant. With

regard to the land, the Prosecution claimed suspicious circumstances and elements surrounding the agreement such as the agreement was notarized in the name of Ghulam Mohd, instead of the Appellant or the Accused No. 10, 4 Kanals of the land in question was mortgaged with J&K Bank and as such, no agreement could have been entered in this regard. The land was purchased for commercial activities, however, no conversion of land, or an attempt thereof, was ever made by the parties to the agreement till date, and the Appellant started remitting funds to the tune of Rs. 1.30 Crores to the Accused No.10 much before the date of agreement. Importantly, the Agreement was valid for a period of three months from the date of its attestation, but large sum of money was remitted by the Appellant to Accused No. 10 even after the expiry of the agreement and for over 2 years. Moreover, the documents, that are, the Partnership Deed and the Irrevocable Power of Attorney are yet to be proved during trial. Keeping this in view, the Prosecution has been able to establish *prima facie* case that the Appellant aided and assisted the Accused No. 10 to bring foreign remittances into India for furthering secessionist and terrorist activities by the Accused No. 10 in the Kashmir valley.

81. Notably, the role of the Appellant is intrinsically linked with the Accused Zahoor Ahmad Shah Watali, whose bail application was initially rejected by the learned ASJ in the present NIA case and was assailed by him before this Court in

Criminal Appeal No. 768/2018. This Court considered accused Zahoor Ahmad Shah Watali's Appeal and granted him bail *vide* the Order dated 13.09.2018. Thereafter, this Order was successfully challenged by the NIA before the Supreme Court in ***Zahoor Ahmad Shah Watali*** (supra) wherein the Supreme Court found reasonable grounds to believe the allegations against the Accused No. 10 to be *prima facie* true and the Order of this Court granting bail to the said accused was set aside and the Order of the learned ASJ was affirmed, holding as under with respect to Accused No. 10 Zahoor Ahmad Shah Watali:

> *"32. Accordingly, we have analysed the matter not only in light of the accusations in the FIR and the charge-sheet or the police report made under Section 173, but also the documentary evidence and statements of the prospective witnesses recorded under Sections 161 and 164, including the redacted statements of the protected witnesses, for considering the prayer for bail.*
> *X*
> *X*
> *34. After having analyzed the documents and the statements forming part of the charge-sheet as well as the redacted statements now taken on record, we disagree with the conclusion recorded by the High Court. In our opinion, taking into account the totality of the report made under Section 173 of the Code and the accompanying documents and the evidence/material already presented to the Court, including the redacted statements of the protected witnesses recorded under Section 164 of the Code,* ***there are reasonable grounds to believe that the accusations made against the Respondent are prima facie true.*** *Be it noted, further investigation is in progress."*

82. In the backdrop of the aforesaid, we may herein itself note that there are direct transactions/dealings between the Appellant and the Accused No. 10 in terms of various agreements and partnerships entered into between them. The Supreme Court in the aforementioned case, in detail, observed the incriminating evidences against the Accused No. 10. The Supreme Court had also noted the allegations from the Chargesheet, the extract of which is hereinbelow:

> *"40.....*
> *17.6.5 (Hawala): ..... (iv) During the course of investigation, it was also revealed that on 7-11-2014, one Naval Kishore Kapoor, son of Om Prakash Kapoor, resident of PO Box 8669, Oman, UAE entered into an agreement with Trison Farms and Constructions (P) Ltd. through its Managing Director Zahoor Ahmad Shah Watali to take a piece of land measuring 20 kanals in Sozeith Goripora Nagbal, Badgam on lease in consideration of an amount of Rs 6 crores as premium and Rs 1000 annual rent for an initial period of 40 years extendable as may be mutually agreed between the parties. In the agreement, M/s Trison Farms and Constructions (P) Ltd. was declared to be the absolute owner of the piece of land in question. Mr Naval Kishore Kapoor remitted a total amount of Rs 5.579 crores in 22 instalments between 2013 and 2016 to the accused Zahoor Ahmad Shah Watali.*
> *This clearly shows that Zohoor Watali was remitting money received from unknown sources to India."*

83. With regard to the some of the documents which are also relied upon by the Respondent to implicate the Appellant, the Supreme Court in reference to the co-accused Zahoor Ahmad

Shah Watali, also observed as under:

> *"41. In reference to these accusations, the entry in the diaries and the green-coloured document, recovered from the residence of Ghulam Mohammad Bhatt, is significant. Further, the seizure memo described as document No.D-3/6, in respect of search and seizure of articles/documents seized from the premises of the Respondent (Accused 10) dated 03.06.2017, would unravel the activities of the Respondent, including regarding his financial deals.....*
> *44. The view so expressed by the Designated Court commends to us.*
> *45. Suffice it to observe that the High Court adopted a tenuous approach - by first discarding the document No. D-132(a) and then discarding the statement of witnesses recorded under Section 161 and also the statements recorded under Section 164, presented by the Investigating Agency in a sealed cover. As aforesaid, the High Court ought to have taken into account the totality of the materials/evidences which depicted the involvement of the Respondent in the commission of the stated offences and being a member of a larger conspiracy, besides the offence under Section 17 for raising funds for terrorist activities."*

84. The document [D-132(a)] relied upon by the Prosecution against the Appellant, which is the green loose sheet of paper seized from the house of the Accountant of Zahoor Ahmad Shah Watali, allegedly reveals foreign remittances received by the Accused Zahoor Ahmad Shah Watali from 2015-2016, the time period during which the Prosecution claims that the Appellant had remitted funds to him. The same has also been taken note by the Supreme Court, as under:

"39. Reverting to the documents on which emphasis has been placed, Document No. D-132 is the seizure memo of properties seized from the premises of Ghulam Mohammad Bhatt (W-29), the then Munshi/Accountant of the Respondent (Accused 10). Document No. D-132(a) is the green page document, seized during the search of the residence of the said Ghulam Mohammad Bhatt, containing information about foreign contributions and expenditures of the Respondent (Accused 10) during 2015/2016. Whether this document is admissible in evidence would be a matter for trial. Be that as it may, besides the said document, the statements of Ghulam Mohammad Bhatt (W-29) has been recorded on 30-8-2017 and 1-11-2017. Whether the credibility of the said witness should be accepted cannot be put in issue at this stage. The statement does make reference to the diaries recovered from his residence showing transfer of substantial cash amounts to different parties, which he has explained by stating that cash transactions were looked after by the Respondent (Accused 10) himself. He had admitted the recovery of the green-coloured document from his residence, bearing signature of the Respondent (Accused 10) and mentioning about the cash amounts received and disbursed during the relevant period between 2015 and 2016.The accusation against the Respondent (Accused 10) is that accused A-3 to A-10 are part of the All Parties Hurriyat Conference which calls itself a political front, whereas their agenda is to create an atmosphere conducive to the goal of cessation of J&K from the Union of India. The role attributed to the Respondent (Accused 10) is that of being part of the larger conspiracy and to act as a fund raiser and finance conduit. Ample material has been collected to show the linkages between the Hurriyat leaders of the J&K and terrorists/terrorist organisations and their continuous activities to wage war against the

Government of India."

85. The Prosecution has also heavily relied on the statement of the protected witness Romeo, recorded under Section 164 of Cr.P.C. He states that the Appellant and Accused No. 10 came by the said witness's office in October, 2014 for formation of M/s NZ Farms and Resorts for the purpose of hospitality and building activities, which company was subsequently formed with an authorized capital of Rs. 1 Crore in December, 2014, and they had also discussed investment through remittances from Dubai. The learned ASJ had noted that this witness prepared the balance sheet for period ending on 31.03.2015.

86. It is an admitted position that Appellant has been charged with offence under Section 17 of the UA(P) Act and Section 120B of IPC and is discharged of the offence punishable under Section 21 of UA(P) Act. It would be relevant to reproduce Section 17 of the UA(P) Act which reads as under:-

> ***"17. Punishment for raising funds for terrorist act**.--Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.*
> *Explanation.--For the purpose of this section,*
> *(a) participating, organising or directing in*

any of the acts stated therein shall constitute an offence;
(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and
(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under section 15 shall also be construed as an offence."

87. The Section primarily provides for the punishment for raising funds for the terrorists act. It states that anyone who raises funds from any source whether legitimate or illegitimate, in India or abroad, can be imprisoned for a minimum of 5 years upto life, and can also be fined. It also applies to attempts made to raise funds for a terrorist act, for a terrorist organisation, gang or individual terrorist. It includes raising funds through smuggling, production, or circulation of counterfeit Indian currency.

88. It is also relevant to note that this Court, at this stage, is not required to hold a detailed analysis of the evidence, and the case is to be considered on the broad probabilities. The present is a case of a conspiracy, therefore, it is the circumstances that unfold the evidence, from which it has emerged that there is a larger conspiracy entered between various terrorist organizations with the assistance from funding raised by them through illegal means for furthering terrorist and secessionist

activities in Jammu and Kashmir. The Appellant has been accused of channelling funds to the Accused No. 10, who would further remit these funds to be utilized by the terrorist organizations for wreaking havoc by way of stone pelting, burning of schools, etc in the Kashmir valley. The above discussion *prima facie* reveals that (i) money of terror funding was sent from and by Pakistan and its agencies and (ii) that Accused No. 10 was one of the main conduits for flow of this terror funding, and (iii) the Appellant had played an active part in facilitating it.

89. In view of the totality of the facts and circumstances that have emerged, coupled with the observations by the Supreme Court as noted hereinabove, and that this Court found on record, sufficient material is available to *prima facie* point towards involvement of the Appellant that he along with Accused no. 10 aided and abetted flow of funds from fake and bogus companies floated in UAE to channelize the same to secessionists and separatists in Kashmir valley, suffice to say, there are reasonable grounds to believe the allegations against the Appellant to be *prima facie* true in reference to the documents collected by the investigating agency during the investigation, which on broad probabilities, are sufficient to implicate the Appellant in the present case.

90. The credibility and admissibility of the documents are not to be tested at this stage and they are to be treated as it is, as per

the laid down law. Needless to say, once the Charges have been framed in a given case, it is safe to assume that there is a strong suspicion based on the material brought on record by the Prosecution, which is satisfied in the present case.

91. The Appellant has claimed that he is a resident of Dubai and has spent the past 20 years in Dubai and has business interest there. In the event of his release on bail, there is a likelihood of him fleeing from the clutches of law to evade Prosecution, given the nature and gravity of offences he is visited with. The Prosecution is yet to examine all of its protected witnesses, as submitted during the course of arguments, therefore, the possibility also cannot be ruled out that Appellant may influence them or tamper with evidence.

92. Proceeding to address the submission of the Appellant that the arresting officer was not authorized by the Designated Authority under Section 43A of UA(P) Act to carry out his arrest as no general or special order or even an authorization as required under the said provision had been made, which was vehemently refuted by the Respondent by submitting that the Appellant was arrested after due compliance of the laid down procedure and was arrested *vide* Arrest Memo dated 26.07.2018 and moreover, the contentions and averments raised by the Appellant have all been considered by this Court in its Order dated 28.05.2019 at the time of testing 'Cognizance' in Appeal, and no Special Leave Petition had been preferred by the

Appellant to assail the same before the Supreme Court.

93. We had also put to the learned counsel for the Respondent as to whether the Officer arresting the Appellant was the authorized person to carry out his arrest in compliance of Section 43A of the UA(P) Act. To which query, the learned counsel for the Respondent, alluded to the FIR dated 30.05.2017 and also referred to the Office Order dated 07.07.2017, Order dated 26.07.2018 under Section 43A of the UA(P) Act and the Case Diary dated 26.07.2018 of the present case, and submitted that upon perusal of the same, it would be clear that there was a valid authorization in favour of Shri. Arvind Digvijay Negi to conduct investigation into the case and thus, to arrest the accused.

94. To the said submission, the learned counsel for the Appellant submitted that the said documents never formed part of the Chargesheet nor were placed with it. Therefore, the same cannot validate the arrest of the Appellant.

95. At this stage, we may also reproduce Section 43A of the UA(P) Act:

> *"43A. Power to arrest, search, etc.—Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may*

> *furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place."*

96. The referred portion from the FIR dated 30.05.2017 reads as under:

> *"Shri Arvind Digvijay Negi, IPS, SP/TFFC, NIA Headquarter, New Delhi has been directed to take up the investigation into the case as the Chief Investigation Officer."*

97. We may also note the relevant extracts from the Order dated 26.07.2018 under Section 43A of the UA(P) Act passed by the Director General, NIA, the same are as below:

> *"Now, therefore, in exercise of powers conferred by the Central Government under Section 43-A of the Unlawful Activities (Prevention) Act, 1967, I direct Sh. Arvind Digvijay Negi, IPS, SP, NIA to arrest the above person observing all legal formalities"*

98. Learned counsel for the Respondent drew our attention to the Case Diary dated 26.07.2018 and submitted that a proposal was forwarded to the Competent Authority in this regard and on getting the said approval, the Appellant was arrested following all legal procedures and the grounds of arrest were conveyed to him, as has duly been recorded in the Case Diary.

99. In view of the above and also upon perusal of the Arrest

Memo dated 26.07.2018, we find that Shri A.D. Negi, IPS, SP, NIA is the arresting Officer effecting Appellant's arrest. The said Arrest Memo also bears the signatures of the Appellant. We do not find any force in the submission of the Appellant that as the aforesaid documents were not filed along with the Chargesheet, the same have no relevance. All the above documents have been executed before effecting the arrest of the Appellant and will not lose their relevance merely because the same were not filed along with the Chargesheet. Therefore, there is no substance in the submissions of the Appellant regarding his arrest being improper.

100. At this stage, we may also analyse the judgments relied upon by the learned counsel for the Appellant.

101. In the case of ***K.A. Najeeb*** (supra), amongst other factors, importantly, the trial had not commenced (which is not the case herein) and the co-accused was convicted and sentenced to only 8 years of imprisonment and the accused therein had already undergone incarceration of 5 years in custody, therefore, the accused was enlarged on bail. The present case is also distinguishable on facts inasmuch as the co-accused Yasin Malik has been sentenced to life imprisonment by the learned ASJ.

102. The decision in ***Ashim*** (supra) is distinguishable on facts inasmuch as the Charges in the said case were framed 7 years after filing of the Chargesheet. Moreover, the examination of

PW-1 was itself yet to be completed.

103. In ***Shoma Kanti Sen*** (supra) the Charges were yet to be framed and the allegations against the accused were not *prima facie* found to be made out under Chapter IV and VI of UA(P) Act.

104. In ***V. Senthil Balaji*** (supra), there were a total of 2000 accused persons who were yet to argue on framing of Charge, and, thereafter, around 600 Prosecution witnesses to be examined. Moreover, the case pertained to Prevention of Money Laundering Act, 2002.

105. In ***Jahir Hak*** (supra), the co-accused had been granted bail by the Supreme Court, moreover, this decision was rendered on the basis of the nature of the case against the accused, the evidence already recorded wherein nothing had been found against the accused therein, and his period of incarceration. Even, the other cases relied upon also do not come to the aid of the Appellant. They are not being discussed in detail for want of brevity.

106. We, thus, find merit in the submission of the learned Senior Counsel for the Respondent that the decisions relied upon by the Appellant are distinguishable on their own facts, as in some of these cases the co-accused had been granted bail or was sentenced to a lesser punishment, the Charges not having been framed, the trial being at the nascent stages or no witnesses having been examined since the framing of Charges,

or the Charges were not serious that warranted further incarceration or that the Charges were not serious as compared to offences under UA(P) Act; factors which make them distinguishable to the case at hand.

107. Insofar as the argument of the learned counsel for the Appellant that the Appellant was initially a witness in the investigation and was subsequently arrayed as an accused in absence of any incriminating material brought forth by the Respondent in the supplementary Chargesheet, the same was controverted by the learned Senior Counsel for the Respondent by contending that merely because the Appellant was once a witness, it would not be a bar to the Prosecution to array him as an accused if evidence pointed his involvement in the crime. Moreover, he contended that it is settled law that the investigating agency can file a supplementary Chargesheet based on reinterpretation of the existing evidence and even without existence of new material on record. Reliance for which was placed in the following judgements:

- ***Hemant Dhasmana vs CBI:*** (2001) 7 SCC 536
- ***Deepak Dwarkadas Patel and Anr. vs State of Gujarat:*** 1979 SCC OnLine Guj 19
- ***Madhusudan Mukherjee & Anr. vs State of Bihar &Anr.:*** 2009 SCC OnLine Pat 574
- ***State of Orissa vs Mahima Alias Mahimananda Mishra &Ors.:*** (2007) 15 SCC 580
- ***P.G. Periasamy & Anr. vs Inspector of Police, Pennagaram Police Station***: 1983 SCC OnLine Mad 106

108. We find that this submission was also raised before this Court while assailing the order passed by the learned ASJ

taking 'Cognizance' of the Supplementary Chargesheet, the said order has been affirmed in Appeal before this Court and has not been assailed before the Supreme Court. The relevant observations of this Court *vide* Order dated 28.05.2019 in ***Naval Kishore Kapoor v NIA*** (supra) are as under:

> *"21. Having discussed the material available on record, we are of the considered view that the arguments advanced on behalf of the Appellant that the learned Trial Court erroneously and wrongly took cognizance against the Appellant because no fresh material was produced by the investigating agency in the supplementary chargesheet implicating the Appellant in the alleged conspiracy, is without force as there is sufficient material available on record which prima facie points towards the involvement of the Appellant that he along with accused No. 10/Zahoor Ahmad Shah Watali aided and abetted the flow of funds from fake and bogus companies floated in UAE and channelize the same to the secessionists and separatists in Kashmir Valley. The National Investigation Agency on the basis of fresh material collected, was able to unearth the fresh cause of action against the Appellant/Naval Kishore Kapoor and filed the supplementary chargesheet against him."*

109. This in itself shows that the evidence and the material collected by the investigating agency have *prima facie* been tested at that stage. Now, even the Charges have been framed against the Appellant and this argument was also raised before the learned Trial Court during the framing of Charge, which order has not been assailed by the Appellant. Therefore, we find no merit in the said contention of the Appellant.

110. In view of the foregoing discussion, the Appeal is, accordingly, dismissed. However, we make it clear that the observations made hereinabove are only for the purpose of deciding this Appeal and would not be treated as an expression on the merits of the case before the learned ASJ.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

MARCH 12, 2025
KM/SU