



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous Bail Application No. 11044/2023

Mohammad Ammar Yasir

-----Petitioner

Versus

The State Of Rajasthan, Through Pp

-----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 10286/2023

Mohammad Maroof

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. J.S. Choudhary, Sr. Adv. Assisted
by Mr. Pradeep Choudhary and
Ms. Sampatti Choudhary
Mr. Nishant Bora

For Respondent(s) : Mr. Anil Joshi, GA cum AAG
Mr. Rajat Chapparwal, AAAG
Mr. Nirmal Kanwar, CI, ATS

HON'BLE MR. JUSTICE KULDEEP MATHUR

Order

1/11/2023

These applications for bail under Section 439 Cr.P.C. have been filed by the petitioners who have been arrested in connection with F.I.R. No.113/2014 registered at Police Station Pratapnagar,



District Jodhpur for offences under Sections 4, 5, 6 of Explosive Substances Act, Sections 16, 17, 18, 18A, 18B, 19, 20, 23, 38 of Unlawful Activities (Prevention) Act and Sections 120-B, 121, 121A, 122, 465, 468, 471 IPC.

Learned counsel for the petitioners submitted that there is no *prima facie* material available on record to implicate the petitioners for offences under the Unlawful Activities (Prevention) Act, 1967. Learned counsel at the outset, urged that the petitioners have already undergone custody for a period of more than 9 years as under-trial prisoners.

Learned counsel for the petitioner- Mohammad Ammar Yasir submitted that the specific allegation against the petitioner is that he attended a meeting held in Mandore Garden, Jodhpur at some time in the year 2013, with petitioner- Mohammad Maroof, in connection with the activities of a banned terrorist organization namely Indian Mujahideen. It was submitted that further allegation against the petitioner is that he was involved in hatching conspiracy to conduct terrorist activities in the State of Rajasthan. Learned counsel for the petitioner submitted that there is neither any direct nor corroboratory evidence available on record indicating involvement of the petitioner in the commission of alleged crime. Learned counsel vehemently submitted that the factum of the petitioner- Mohammad Ammar Yasir having attended a meeting in Mandore Garden, in the year 2013, had only surfaced in his interrogation note prepared by the investigating agency which is otherwise not admissible in evidence. It was thus, urged that no offence under the Unlawful



Activities (Prevention) Act, is *prima facie* made out against the petitioner- Mohammad Ammar Yasir.

Learned counsel appearing for the petitioner- Mohammed Mashroof submitted that the petitioner has been implicated in the present case, solely on the basis of certain chat messages made by him and co-accused persons, however, the same are not enough to connect the petitioner with any offence whatsoever. Learned counsel submitted that in absence of any incriminating material to prove that the petitioner- Mohammed Mashroof had indulged in any terrorist activity/activities, the provisions of Unlawful Activities (Prevention) Act will not be attracted.

Lastly, learned counsel for the petitioners jointly submitted that co-accused person namely Mohamed Javed has been enlarged on bail by the coordinate Bench of this Court vide order dated 19.07.2022, while deciding SB CrI. Misc. Bail Application No. 761/2022. It was further submitted that co-accused persons namely Mahsraf Iqbal and Jahir Hak against whom similar allegations have been levelled, have also been granted indulgence of bail by Hon'ble the Supreme Court of India vide orders dated 20.03.2023 and 11.04.2022, passed in Cr.Appeal No.845/2023 "Masraf Iqbal Vs. State of Rajasthan" and Cr.Appeal No.605/2022 "Jahir Hak Vs. The State of Rajasthan" respectively.

Learned counsel jointly submitted that the case of the present petitioners is not distinguishable from that of co-accused persons who have already been enlarged on bail. It was thus prayed that the petitioners who are in custody for last more than 9 years deserve to be enlarged on bail.



Per contra, learned Public Prosecutor along with Investigating Officer present before this Court, has opposed the bail applications. Drawing attention of the Court towards the charge-sheet submitted by the investigating agency against the petitioners before the competent criminal court, learned Public Prosecutor submitted that the petitioners had not only participated in the secret meetings held for furthering the objectives of a banned terrorist organization but had also provided monetary and logistical support in conducting criminal and violent activities. Learned Public Prosecutor submitted that the petitioners had also targeted and instigated others to commit/ involve themselves in terrorist activities. It was vehemently urged that the charge-sheet submitted against the petitioners is only indicative of the role played by them in the commission of alleged crime however, looking to the nature of accusations against them, further evidence unearthing their real/ particular role may surface during trial. Learned Public Prosecutor argued that sufficient material is available on record indicating involvement of the petitioners in the commission of alleged crime so much so that evidence to the effect that the petitioner- Mohammed Maroof was in constant touch with the terrorists based in Pakistan namely, Iqbal Bhatkal and Riyaz Bhatkal, who are head of the banned terrorist organization, available on record. It was further submitted that the petitioner- Mohammed Ammar Yasir after coming in touch with the petitioner- Mohammed Mashroof, had started actively participating in anti-national activities, as a member of the



terrorist organization and had conspired with other co-accused persons in committing criminal acts.

Lastly, learned Public Prosecutor submitted that role of co-accused persons who have been enlarged on bail by Hon'ble the Supreme Court of India, is different as well as distinguishable from that of the present petitioners. It was further submitted that even otherwise, co-accused persons had been enlarged on bail mainly on the ground that they had suffered long period of incarceration. Learned Public Prosecutor brought to the notice of this Court that now the trial is being conducted against the petitioners on a day-to-day basis and till date, as many as 68 witnesses have already been examined out of 110 cited prosecution witnesses. The prosecution is therefore, making all possible efforts to conclude the trial against the petitioners at the earliest.

On these grounds, it was urged that the bail applications filed by the petitioners deserve to be rejected.

Heard learned counsel for the petitioner and learned Public Prosecutor. Perused the material available on record.

Having considered the rival submissions, facts and circumstances of the case and having perused the FIR, challan papers, this Court *prima facie* finds that the allegations against the present petitioners is of actively participating in the terrorist activities organized by a banned organization. Further allegation against the petitioners is of instigating others to not only become members of a banned terrorist organization but to also actively participate as members of the terrorist group in the anti-national activities organized by it. This Court also *prima facie* finds that





oral, documentary and electronic evidence in form of mobile phones, chats, videos etc., are available with the investigating agency depicting participation of the petitioners in the commission of alleged crime.

This Court, in view of the aforesaid discussion finds it difficult to record a *prima facie* opinion as required under Section 43D (5) of the Unlawful Activities (Prevention) Act that the accusations against the petitioners are not correct or that there is no material available on record which could connect the petitioners with the alleged offences under the Unlawful Activities (Prevention) Act.

This Court *prima facie* finds that the coordinate Bench of this Court vide order dated 19.07.2022, passed in S.B. CrI. Misc. Bail Application No.7661/2022, had directed the trial court to conduct the trial expeditiously and on a day to day basis. The co-ordinate Bench at the time of passing the order noted that only 15 witnesses have been examined before the trial court. This Court finds that after passing of order dated 19.07.2022, 68 witnesses have deposed before the trial court, out of 110 cited prosecution witnesses. In view of the fact that more than half of the prosecution witnesses have been examined coupled with the fact that the trial court is conducting trial on day to day basis and making all endeavors to conclude the trial at the earliest, this Court is of the opinion that the trial of the case is likely to be concluded shortly. In view of above mentioned factual matrix, the argument that the petitioners have suffered incarceration for a period of more than 9 years does not appeal to this Court especially when nothing has come on record to show that the



prosecution is unnecessarily delaying the trial against the petitioners.

This Court is conscious of the fact that any further comment based on the record of investigation produced before this Court at this stage may prejudice the prosecution's case at the trial, therefore, the Court is restraining from recording any detailed observations in relation to the individual roles played by the petitioners, based on the record of the investigation.

Consequently, the bail applications under Section 439 Cr.P.C. are rejected.

It is however, made clear that findings recorded/observations made above are for limited purposes of adjudication of bail application. The trial court shall not get prejudiced by the same.

(KULDEEP MATHUR),J

/tarun goyal/-