

Reserved on 09.12.2022
Delivered on 16.12.2022

Court No. - 1

Case :- CRIMINAL APPEAL No. - 1926 of 2022

Appellant :- Md. Umar Gautam

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lucknow

Counsel for Appellant :- Prasoon Srivastava

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.

Hon'ble Mrs. Saroj Yadav,J.

- (1) The instant Criminal Appeal has been filed by the appellant-Mohd. Umar Gautam, under Section 21 (4) of the National Investigation Agency Act, 2008 [here-in-after referred to as 'Act of 2008'], challenging the order dated 05.05.2022 of refusal of bail to the appellant by the learned Special Judge, NIA/ATS/Additional District & Sessions Judge, Court No.3, Lucknow in Bail Application No. 1790 of 2022, *Mohd. Umar Gautam Vs. State of U.P. through ATS*.
- (2) Brief facts of the case are that an F.I.R. was lodged as Case Crime No. 9/2021 on 20.06.2021 at 11.35 hours at Police Station ATS Gomti Nagar, District Lucknow for offences under Sections 420, 120-B, 153-A, 153-B, 295-A, 511 IPC and 3/5 U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 [here-in-after referred to as 'Act of 2021'] against the appellant, Mufti Qazi Jahangir Qasmi, Chairman of Islamic Dawah Centre (IDC) and unknown persons.
- (3) The allegations against the appellant are that he was involved in promoting enmity between different groups of religion and disturbing the sovereignty and integrity of India by influencing the non-Muslim sects to convert and to embrace Islam. The appellant procured the funds from different donors into his organization to achieve the said objective. It is further averred in the FIR that on the information received through FIR/Case

Crime No. 473 of 2021 which was registered under Sections 419, 420, 506 IPC at Police Station Masuri, District Ghaziabad, it came into light that the appellant-Mohd.Umar Gautam, who is a converted Muslim, is involved in getting the people of another religion converted into Islam on large scale and about 1000 non-Muslims have been converted and married with Muslims. Further, it is stated that the accused-appellant and his associates are running an organization, namely, Islamic Dawah Centre (IDC) for the said purpose of conversion and huge fund is being provided to Islamic Dawah Centre (IDC) from different sources including foreign countries. It also came into picture that the students of Deaf and Dumb School, namely, NOIDA Deaf Society, have been converted in illegal manner by practicing misrepresentation, allurements and fraudulent means. On enquiry, it was found that a Case Crime No. 247 of 2021 was registered under Section 364 IPC for kidnapping of one Aditya Gupta by his mother, who states that his son was forcibly converted and was taken to a place in southern part of India.

- (4) During the investigation of the present case, it was found that the accused-appellant had created a gang for the aforesaid aim and object and Irfan Shaikh @ Irfan Khan, who was working as an Interpreter in Sign Language Training and Research Centre, New Delhi, was a vital link of this syndicate as it transpires from FIR of Case Crime No. 9 of 2021 that the appellant was involved in the incident which took place on 02.06.2021 at Hindu Temple “Devi Mandir Dasna” situated at Masoori, district Ghaziabad wherein it was alleged that two Muslim boys entered the temple with an intention to harm the priest “Guru Yati Narshinhanand Saraswati Ji” for which an FIR No.473 of 2021 was lodged against the appellant on 03.06.2021 as has been referred to above.

- (5) During the course of investigation, Sections 121-A, 123, 417, 298 IPC and Section 8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 were added, while Sections 420 and 511 IPC were omitted by the Investigating Agency.
- (6) After investigation, the ATS has submitted first charge charge-sheet on 13.08.2021 under Sections 120-B, 153-A, 153-B, 295-A, 417, 298 IPC and Sections 3, 5, 8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 against Salahuddin Jainuddin Sheikh, the appellant, Mufti Qazi Jahangir Qazmi, Mannu Yadav alias Abdul Mannan, Rahul Bhola alias Rahul Ahmad, Irfan Shaikh @ Irfan Khan, whereas second supplementary charge sheet was filed on 17.09.2021 under Sections 120-B read with Sections 153-A, 153-B, 295-A, 417, 298, 121-A and 123 IPC and Sections 3, 5, 8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 against the appellant, Salahuddin Jainuddin Sheikh, Mufti Qazi Jahangir Qazmi, and Irfan Shaikh @ Irfan Khan and in the said charge sheet, offences under Sections 121-A and 123 IPC have been added against the aforesaid accused.
- (7) The appellant thereafter moved a bail application before the Special Court, NIA/ATS, Lucknow and the same was dismissed by the impugned order dated 05.05.2022 and being aggrieved by the same, the applicant has preferred the present Appeal under Section 21 (4) of Act of 2008.
- (8) Pleadings have been exchanged between the parties.
- (9) Heard Shri Prason Srivastava, learned Counsel for the appellant and Shri S.N. Tilhari, learned Additional Government Advocate for the State-respondent and perused the material brought on record.

- (10) It has been vehemently argued by learned counsel for appellant that the applicant-appellant is an educated and law abiding citizen and is working as Lecturer in Jamia Millia University since 1991. He was also engaged in charitable work and also associated with NGOs. He created a separate Charitable Trust (NGO) in the name of “Fatima Charitable Foundation” in the year 2007 having its Registered Office at New Delhi. Under the aegis of said Charitable Trust, an Islamic Dawah Center (IDC) was established at New Delhi with sole objective to help the needy and unprivileged people by providing them financial aid, education, medical facilities and other basic facilities irrespective of their religion. A copy of MOU of the Fatima Charitable Foundation has been annexed as Annexure – 2 to the Bail Application.
- (11) During the COVID period also, the organization worked restlessly and helped thousands of people across the nation. The appellant and its organization distributed thousands of packets, medical kits, blankets, made available hundreds of oxygen cylinders, and arranged ambulances to ferry patients etc. and helped countless people. For this purpose, many donors and close family friends contributed financially and physically. The aforesaid charitable work done by the appellant was noticed by various Islamic Organizations, who subsequently contacted the appellant. The influential Islamic Organizations wanted to act as per the principles and objectives and further they started demanding financial aid from the organization of the appellant, but when the appellant refused to follow their dictates, then the said Islamic Organizations became inimical to the appellant and they bore grudge against him and his Organization, resulting into harassment of the appellant since 2020 and the instant case has been conspired against the appellant levelling frivolous allegations.

- (12) It has been argued that the appellant is innocent and has been falsely implicated in the instant case by the Anti-Terrorist Squad (ATS), Lucknow in an arbitrary manner without any credible or reliable evidence with the sole objective to satisfy ulterior motives and to achieve mischievous political gains.
- (13) It is further contended that no incriminating material has been recovered from the appellant and not even a single witness or converttee has ever alleged use of force, misrepresentation, coercion or any kind of allurements offered by the appellant. It was further argued that in the entire process of hatching a conspiracy to implicate the appellant, the police failed to adduce a single person who could have made allegations of forceful conversion against the appellant or any member of the Society run by the appellant. In absence thereof, the police through SI Vinod Kumar himself became the complainant and lodged the FIR of the present case.
- (14) Learned counsel for the appellant submits that the appellant himself is a voluntarily converted person without any force, coercion and allurements. He embraced Islam out of his free-will and consent and is continuing to do so. The organization "Islamic Dawah Center" worked for the underprivileged people irrespective of their religion to provide basic facilities. The Organization helped to prepare the conversion documents of the converttees after getting assured on affidavit that the decision to get converted was out of free-will, with any undue influence or coercion or misrepresentation and the person is a major. The appellant or his organization used to keep all documents, namely, statements, application forms, affidavits sworn by the converttees in their office, but the police has collected most of the documents during raid.

- (15) It was further argued that the statement of Aditya Gupta for which an F.I.R. was lodged by his mother as Case Crime No. 247 of 2021 under Section 364 IPC with an allegation that her son has been kidnapped and is forcibly converted into Muslim, has clearly stated that he himself with his free-will and without any coercion, embraced Islam and during investigation, the statement of Ms. Laxmi Gupta, mother of Aditya Gupta has been recorded and neither the name of the appellant nor the name of his Organization is surfaced.
- (16) Similarly, the statement of one Mannu Yadav was also recorded under Section 161 Cr.P.C. by the Investigating Officer, who himself has stated that he embraced Islam without any undue pressure or coercion. Thus, it is apparent from the statement that the appellant had no role to convert anybody into Islam.
- (17) He further submitted that the appellant was providing facilities to the people who wanted to embrace Islam by preparing legal documents as per the requirement and the appellant never approached anyone to embrace or follow Islam or any kind of activity subversive to law and order.
- (18) In this regard, the statement of one Anshuman Tiwari was recorded by the Investigating Officer, who had approached the Islamic Dawah Center (IDC) to prepare a Conversion Certificate so that he can marry one Uruz Fatima. Similarly, it was pointed out that from the statements of Dipansh Dubey, Shrishti Tiwari alias Zainab, Paresh Horede and Naveen Alias Naved Ahmad reveal that the said persons have voluntarily embraced Islam and the appellant had no role to forcibly convert them into Islam by allurement.

- (19) He further submitted that Section 4 of Act 2021 provides that any aggrieved person, his/her parents, brother, sister or any other person who is related to him/her by blood, marriage or adoption may lodge a first information report of such conversion which contravenes the provisions of Section 3, whereas in the instant case, the F.I.R. has been lodged by S.I. Vinod Kumar in the capacity of complainant, who is neither an 'aggrieved person' nor is related to the aggrieved person in any manner as he is Sub-Inspector of Anti-Terrorist Squad, Noida Unit, Uttar Pradesh which itself is untenable in the eyes of law. It was argued that no offence under Sections 3/8 of the Act of 2021 is made out against the appellant.
- (20) Learned Counsel for the appellant has further submitted that as per Section 8 of Act of 2021, all applications which have been made by the persons of other religions were prior to the enforcement of Act of 2021, hence no offence under Section 8 of Act of 2021 is made out against the appellant as the said Act came into force with effect from 27.11.2021 and all the incidents alleged against the appellants are prior to that, which is apparent from the record.
- (21) Learned Counsel for the appellant further has relied upon various judgments of the Apex Court with respect to grant of bail and further, no offence, whatsoever, is disclosed against the appellant for the offences in question. Further, it is submitted that the appellant is in jail since 20.06.2021, hence he may be released on bail as the trial is not likely to conclude in the near future.
- (22) *Per contra*, learned Additional Government Advocate, on the other hand, has vehemently opposed the prayer for bail and has submitted that the appellant is running a syndicate alongwith other accused persons in the name of Islamic Dawah Centre

(IDC) for the purpose of conversion of people of other religion into Islam and huge fund is being provided to Islamic Dawah Centre (IDC) from different sources including foreign countries and the appellant had converted large number of non-Muslim persons to Islam and had got them married with Muslims and in this regard, he had referred to an FIR which has been registered as Case Crime No. 473 of 2021 on 03.06.2021 under Sections 419, 420, 295-A/505/506 IPC at Police Station Masuri, District Ghaziabad against one Vipul Vijay Vargiya and Kasif. He pointed out that the present F.I.R. was registered against the appellant alongwith two other co-accused and unknown persons on 20.06.2021 on the information received by the Anti-Terrorist Squad, U.P. that the anti-national/anti-social elements and religious organizations, on the direction of ISI and foreign organizations, are indulged in getting the people converted into Islam. They are getting funds from the foreign countries for this cause. They are targetting people by creating and promoting rumour about other religion by giving hatred speech, by insulting the religion and religious feelings of a class of citizens with deliberate and malicious intention. They are creating ill-will between different religious sections. To achieve their goal, they are converting and attempting to convert the citizens of one religion to other religion by practice of misrepresentation, force, undue influence, coercion, allurements and fraudulent means and by marriage. For this illegal act, they are targetting the weaker sections of the Society, children, women and the people belonging to Scheduled Castes/Scheduled Tribes and their object and goal is to change the demography of country by converting the citizens from one religion to another religion and to disturb the peace and tranquility of society and to disturb the public order.

- (23) It has been revealed during the course of investigation that co-accused Mufti Jahangir Alam Qasmi is one of the associates,

who prepares illegal documents for the purpose of conversion and marriage in conspiracy with other members of the syndicate. It has come into light, during the course of investigation that the students of deaf and dumb school, namely, Noida Deaf Society have been converted in illegal manner by practicing misrepresentation, allurements and fraudulent means. In this regard, he pointed out that a Case Crime No. 247 of 2021, Police Station Kalyanpur Kanpur had been registered under Section 364 IPC for kidnapping of one Aditya Gupta and his parents disclosed that his son was forcibly converted and was taken to a place in southern part of India. Similarly, another incident of illegal conversion came to light through social media that Sri Rajiv Yadav, a resident of Gurgaon, Haryana was disclosing through video that his son Mannu Yadav, a student of Deaf Society, has been converted forcibly without the knowledge of parents.

- (24) It was pointed out that the accused-appellant had been looking the post of Chief Managerial Funding and Logistic Management of this syndicate involved in illegal conversion. He further pointed out that the co-accused persons of the appellant/Mohd. Umar Gautam are working on the principle of Multi-Level Marketing (MLM) and the persons were brought to the accused-appellant for illegal conversion, who used to manage the complete documentation including Gazette Notification of such new convertees with the help of his associates/co-accused persons. The appellant used to manage the service, marriage and funds for such newly converted persons and the appellant was working as a religious preacher of Islam who used to provide different logistic support to new convertees. He urged that if the appellant is released on bail there is every likelihood that he would indulge in such activities which would endanger the national integration of the country.

- (25) Learned Additional Government Advocate has further submitted that the trial is in progress and the appellant has also moved a discharge application which has been rejected and the charge is to be framed against the appellant and co-accused persons. He urged that if the appellant is released on bail there is every likelihood that he would further indulge in such activities which would endanger the national integration of the country.
- (26) We have examined the submissions advanced by the learned Counsel for the parties, perused the impugned order and the material brought on record.
- (27) *Prima facie*, it transpires from the record that the appellant has admitted that he is running an organization in the name of Islamic Dawah Centre (IDC) which welcomes people who embrace Islam and he has engaged his associates who are co-accused persons in the present case by preparing documents for conversion of a person belonging to another religion for embracing Islam and he has categorically stated in his bail application that the said conversion was being carried out by his organization, who embraces Islam voluntarily without any coercion, undue influence or allurements and the said conversion was being carried out by him for the last so many years. It is true that the allegations which have been levelled against the appellant and the co-accused persons that the conversion made by the appellant through his Organization were prior to enforcement of Act of 2021 which came into force with effect from 27.11.2021, but the nature of allegations which have been levelled against the appellant and his Organization and the material collected, during the course of investigation, goes to show that the appellant alongwith co-accused persons was running a syndicate and getting the persons of other religion converted into Islam unlawfully. He was seen giving hatred speech and using derogatory language towards other religion as

some-video links of You Tube have been collected during the course of investigation, which otherwise reflect the innocence of the appellant. The Anti-Terrorist Squad has further collected the bank details wherein the Organization of the appellant was receiving funds from foreign countries to propagate the aims and objects of the Organization of the appellant for converting people of other religion into Islam for increasing the population of the country of Muslims and in this regard, the statements of witnesses, namely, Aditya Gupta, Mohit @ Moin, Dipanshu, Tushar, Navin @ Naved, Mohd. Shabba, accused Mannu Yadav and accused Rahul Bhola disclose and establish the fact of illegal conversion, copies of which have been enclosed as Annexure Nos.CA8 to CA15 to the counter affidavit. It was also found that there was no Bank Account in the name of Islamic Dawah Centre (IDC) as the same was being run by “**Fatima Charitable Foundation**” of the appellant, which was having an account in Kotak Mahindra Bank (Account No. 0711131345). The statement of Bank Account would show the credit of Rs.10,97,978/- and debit of Rs.9,48,338/- during 11th May, 2011 to 28th May, 2021. Further, a huge amount has been received in the personal Bank Accounts of accused Mohd. Umar Gautam and his son/Abdullah Umar for running the activities of Islamic Dawah Centre (IDC). The Bank details of HSBC Bank Account No. 52191467001 of accused-Mohd. Umar Gautam would reveal that total fund of Rs.2.16 crore has been credited in this account by different sources including foreign countries. Further, the other Bank Accounts of accused-Mohd. Umar Gautam, i.e., Jamia Corporation Bank, Standard Chartered Bank, ICICI Bank and SBI Bank would also reveal the credit of Rs.9.54 lakhs.

- (28) The accused/Mohd. Umar Gautam was running the Examination Centre of Islamic Online University which is known as International Open University and is actually run by

the International in famous Islamic Religious Orator Bilal Philistinee, who is banned in U.K., Australia and Denmark and is prohibited from entering into Islamic Online University because of his terrorist activities at Ialamic Dawah Centre (IDC).

- (29) The role of appellant and evidence collected during investigation by the Investigating Officer has been demonstrated in a chart in para – 15 of the counter affidavit which is reproduced hereunder:-

Allegation	Evidence
Mass illegal conversion of persons	<p>(a) There is a video which has been downloaded from open source in which the accused Umar Gautam is himself proclaiming the mass conversion of more than 1000 persons by him.</p> <p>(b) Statement of witness Aditya Gupta</p> <p>(c) Statement of witness Paresh Horode</p> <p>(d) Statement of witness Deepanshu</p> <p>(e) Statement of witness Tushar</p> <p>(f) Statement of witness Nitin Pant</p> <p>(g) Statement of Mohd. Umar alias Ramesh</p>
Preparation of documents for illegal conversion	<p>(a) 10 registers were recovered from the possession of accused, the perusal of which goes to show the details pertaining to conversion of 483 persons.</p>
All the activities of aforesaid conversion were operated by IDC	<p>The brochures and receipts relating to operation and</p>

(Islamic Dawa Centre)	funding of Islamic Dawa Centre.
Receiving heavy funds from foreign countries for illegal conversion	<p>(a) The copy of video transcript obtained from mobile of Mohd. Umar Gautam.</p> <p>(b) The transcript of downloaded video of accused Mohd. Umar Gautam from open source You tube.</p>
To receive funds using Hawala sources	
<p>The following steps are adopted in the procedure of conversion.</p> <p>(1) To identify the social, mental and physical vulnerable persons for conversion.</p> <p>(2) To attract those identified persons on the basis of equality from their original religion with Islam.</p> <p>(3) To make read and supply such literature (electronic/books) in which there are doubtful comments against Non-Islamic Religion.</p> <p>(4) To make lucrative offers to such identified persons for their service, marriage, social award etc. to which they are lacking, and to provoke them to convert to Islam.</p> <p>(5) To convert a person by making him to read Kalma.</p> <p>(6) Sending such persons for study in Jamat or making them join some job in Islamic atmosphere and that too away from their homes.</p> <p>(7) Marrying such people with muslims or neo convert and to motivate them to convert their</p>	<p>Documents pertaining to a case study namely “Duesberry new Muslim Plan” was found from the possession of accused Mohd. Umar in which short and long procedure for conversion are provided and the same was being used by the accused for illegal conversion which is established from the conspiracy he was working in.</p>

family members and known persons to Islam.	
(8) To arrange service, marriage and money for converted persons, so that they may remain following Islam.	
(9) To organize annual functions known as Annual Revert get together of such converted persons and to collect funds for further agenda of conversion.	

(30) Thus, keeping in mind the act and conduct of the appellant, it cannot be said that he is innocent. On the other hand, the evidence collected during of course of Investigation by Anti-Terrorist Squad (ATS) and charge sheet submitted against the appellant, reflects that he was carrying-on anti-national activities with the help of anti-social elements for achieving nefarious design which would weaken the social fabric of the country and developed and spread hatredness amongst the people of different religions which would disturb the public tranquility and public order. He has also received huge sum of money in his personal accounts from different sources including foreign countries. Considering the contention of the learned State Counsel that if the appellant is released on bail, there is every likelihood that he would again indulge in such activities, which would be prejudicial to the national integration of the country, also has substance, hence we do not find any good ground for enlarging the appellant on bail, which is accordingly refused.

(31) Accordingly, while affirming the impugned order dated 05.05.2022, the instant Criminal Appeal of the appellant-Mohd. Umar Gautam, involved in Case Crime No.9/2021, under Sections 120B, 121A, 123, 153A, 153B, 295A, 298, 417 I.P.C. and Section 3/5/8 U.P. Prohibition of Unlawful Conversion of

Religion Ordinance, (Act), 2021, P.S. ATS U.P., District Lucknow, is **dismissed**.

- (32) It is relevant to mention here that the bail of the co-accused person/Irfan Shaikh @ Irfan Khan has been rejected earlier by a Co-ordinate Bench of this Court in Criminal Appeal No. 38 of 2022 vide order dated 25.03.2022 and also of the co-accused persons, Rahul Bhola @ Rahul Ahmad in Criminal Appeal No. 2469 of 2022, Abdullah Umar in Criminal Appeal No. 1739 of 2022, Sallahuddin in Criminal Appeal No. 1925 of 2022 and Mohammad Salim in Criminal Appeal No. 2338 of 2022 have been rejected by this Court today under Section 21 (4) of 2008 of Act which are connected with the present appeal.
- (33) Considering the facts and circumstances of the case, the Trial Court concerned is directed to proceed with the trial and conclude the same, expeditiously, preferably, within one year, from the date of receipt of a certified copy of this order.
- (34) Learned counsel for the parties are directed to place a copy of the order before the Trial Court concerned for information and necessary compliance.

[Mrs. Saroj Yadav, J.] [Ramesh Sinha, J.]

Order Date :- 16.12.2022
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