

Court No. - 10

(1) Case :- CRIMINAL APPEAL No. - 2853 of 2022

Appellant :- Mohd. Mustaqeem
Respondent :- State Of U.P. Thru. Nia
Counsel for Appellant :- Furkan Pathan
Counsel for Respondent :- Shikha Sinha

(2) Case :- CRIMINAL APPEAL No. - 2854 of 2022

Appellant :- Mohammad Shakeel
Respondent :- State Of U.P. Thru. Nia
Counsel for Appellant :- Furkan Pathan
Counsel for Respondent :- Shikha Sinha

Hon'ble Attau Rahman Masoodi,J.
Hon'ble Om Prakash Shukla,J.

Heard learned counsel for the appellants and Ms Shikha Sinha, Special Counsel for NIA.

The aforesaid two appeals arise out of a common FIR registered as Crime No. RC 02/2021, under Section 120B IPC and Section 25 (1B)(a) Arms Act, P.S. NIA, Lucknow.

Pursuant to the FIR lodged, the appellants on being apprehended were arrested on 14.7.2021 and are in jail since last one year and eight months.

Learned counsel for the appellants has submitted that the investigation has already been concluded and the charge sheet submitted before the special court. On examination of the entire material collected during the course of investigation, prima facie, charge under Section 120B IPC and Section 25 (1B)(a) Arms Act has been framed against the appellants.

It is argued that once the purpose of investigation with the collection of relevant material has been served, the curtailment of liberty of the appellants any further, that too in a situation where the trial is to take a long time for the list of witnesses being lengthy, the prolonged incarceration is hit by Article 21 of the Constitution of India, moreso when the presumption of guilt is not available to the prosecution with respect to the offences alleged.

It is further argued that the offences for which the appellants have been charged for facing trial are to be proved during the course of trial and the benefit of Section 43-E of the Unlawful Activities (Prevention) Act, 1967 is not available. Even otherwise, the charges framed are not covered within the scope

of the schedule appended to NIA Act, therefore, the detention of the appellants any further amounts to violation of their liberty contrary to the mandate of Article 21 of the Constitution of India.

On the aspect of their antecedents, it is pointed out that both the appellants are engaged in self employment. The appellant Mohd. Mustaqeem is a mason whereas Mohammad Shakil is a e-rickshaw driver, however, proof in support of this contention is not available on record.

Learned counsel for the appellants has further submitted that there is no past criminal history of the appellants and they have falsely been roped in on the basis of combined call details which are a part of the material before the trial court.

Learned counsel for the NIA has vehemently opposed the prayer for bail and has argued that the trial court has rightly rejected the bail application of the appellants on appreciation of the *prima facie* evidence against them. However, the factual position as aforesaid could not be dispelled satisfactorily.

Having regard to the gravity of the offences for which the trial is framed and looking to the past antecedents of the appellants being unblemished coupled with the fact that they are in jail for the last one year and eight months and trial has begun, a case for grant of bail is made out.

Let Mohd. Mustaqeem (appellant of criminal appeal no. 2853 of 2022) and Mohammad Shakeel (appellant of criminal appeal no. 2854 of 2022) be released on bail in the aforesaid case crime on each of them furnishing a bail bond and two sureties in the like amount to the satisfaction of the court concerned, however, with a rider that both the appellants shall mark their presence in local police station in the first week of every month and shall cooperate with the trial without seeking any undue adjournments.

Both the criminal appeals are accordingly allowed and the impugned orders passed in the respective appeals set aside.

Order Date :- 2.3.2023

Fahim/-