Bombay High Court
J. Kaleel Rahman vs The State Of Maharashtra on 24 August, 2021
Bench: S.S. Shinde, N. J. Jamadar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 118 OF 2021

J. Kaleel Rahman
Indian Inhabitant, Age : 39 years,
Residing at No.4/2, Portughese Church,
3rd Lane, Sewen, Chennai - 600001, ... Appellant/
(Presently lodged at Taloja Jail) Accused No.3
Versus
The State of Maharashtra,
Through National Investigation Agency,
Police Station, Mumbai. ....Respondent

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Ms. Laxmi Raman for appellant.
Smt. A.S. Pai, Special Counsel for NIA.
Mrs.S.D. Shinde, APP for State.

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CORAM : S. S. SHINDE &
N.J. JAMADAR, JJ.
Reserved for Judgment on : 23rd June 2021.
Judgment Pronounced on : 24th August 2021.

JUDGMENT (PER N.J. JAMADAR, J.)

1. This appeal under section 21 of the National Investigation Agency Act, 2008 ('NIA Act') assails the legality, propriety and correctness of an order dated 15 th October 2020 in Bail Application No.981 of 2020 in Special Case No.763 of 2020, whereby the application of the appellant-accused No.3 to enlarge him on bail, came to be dismissed.

Shraddha Talekar PS

2. The background facts leading to this appeal, can be stated in brief, as under :-

(a) The indictment against accused No.3 is that he entered into a criminal conspiracy with Danish Petiwala (accused No.1), Sarasvati @ Muskan (accused No.2) and Amir Mirza @ Rafi Shaikh, a wanted accused (WA), based in Malaysia, to smuggle Fake Indian Currency Notes (FICN) from Malaysia by using banking channel as well as postal services to damage monetary stability of India. The prosecution alleges that in furtherance of their common intention, accused No.1 and accused No.2 deposited genuine currency notes of Rs.45,000/- in the account of accused No.3 maintained with Lokhandwala Branch of ICICI Bank on 20th January 2020, on the instructions of Amir Mirza (WA) towards the cost of FICN of the face value of Rs.1,00,000/-. On the day of the said deposit, accused No.3 was in Malaysia. Accused No.3 few back to India on 21 st January 2020. On 22nd January 2020, he withdrew an amount of Shraddha Talekar PS 3/22 cri.apeal-118-2021-J.doc Rs.50,000/-, in three tranches, from the aforesaid account. The parcel containing the FICN allegedly reached Mumbai on 7th February 2020.

(b) In the intervening period, based on the secret information, Customs Department recovered FICN of 2000 denomination bearing Serial No.7KH-

405578 from Hotel Aadya International, Andheri, Mumbai, where accused No.1 and accused No.2 had lodged themselves. Accused No.1 and accused No.2 were arrested. Crime was registered at C.R.

No.60/2020 for the offences punishable under sections 120B, 489A and 489B, read with 34 of the Indian Penal Code, 1860 ('the Penal Code') against accused No.1, accused No.2 and Amir Mirza (WA).

(c) Upon examination, Currency Notes Press, Nashik Road opined that the Suspected Forged Indian Currency seized at Hotel Aadiya International is a High Quality Counterfeit Note. A Look Out Notice was issued against accused No.3, who had travelled to Malaysia again on 8 th Shraddha Talekar PS 4/22 cri.apeal-118-2021-J.doc February 2020. On 27th February 2020, on his arrival at Chennai Air Port, accused No.3 was apprehended and brought to Mumbai. Eventually, the investigation came to be entrusted to National Investigation Agency ('NIA'). Crime was re- registered at RC-04/2020/NIA/Mumbai on 27 th March 2020. Accused No.3 came to be arrested on 8th April 2020 and arraigned for the offences punishable under sections 120B and 489B read with 34 of the Penal Code and, section 16 read with sections 15(1)(a)(iii-a) and 18 of Unlawful Activities (Prevention) Act, 1967 ('UAPA').

(d) Accused No.3 preferred application for release on bail. The substance of the application before the learned Special Judge, NIA Court was that there was no material to indicate that the accused No.3 was a co-conspirator with the arrested accused and Amir Mirza (WA). In fact, there was nothing to indicate that accused No.3 had even known Amir Mirza (WA), who had allegedly dispatched FICN from Malaysia. Nor the Shraddha Talekar PS 5/22 cri.apeal-118-2021-J.doc

accused No.3 had known accused No.1 and accused No.2, who had allegedly deposited the amount of Rs.45,000/- in his account. Mere deposit of the said amount of of Rs.45,000/- and withdrawal of the amount, even if taken at par, according to accused No.3, would not be suffcient to implicate him as a co-conspirator.

(f) The learned Special Judge was not persuaded to accede to the submission on behalf of accused No.3. Taking into account, the statement of accused No.3, recorded under section 108 of the Customs Act, 1962, wherein accused No.3 had admitted in clear and explicit terms that the amount of Rs.45,000/- was deposited in his account and he had withdrawn Rs.50,000/- on 22nd January 2020 and, yet, the accused no.3 had feigned ignorance about the person who deposited the said amount, the learned Special Judge inferred that there was reiuisite knowledge on the part of accused No.3 so as to make him a co-

conspirator in the conspiracy hatched by the co-

accused and WA to smuggle FICN into India.

Having found that there was material which prima- facie rendered the accusation against accused No.3 true, the learned Special Judge opined that the interdict contained in section 43D(5) of UAPA came into play and, thus, the accused was not entitled to be enlarged on bail.

(g) Being aggrieved by and dissatisfed with the impugned order, the accused No.3 is in appeal.

3. Admit. Taken up for fnal disposal.

4. We have heard Ms.Laxmi Raman, the learned counsel for the appellant and Smt. Pai, the learned Special Counsel for the NIA, at length. With the assistance of the learned counsels for the parties, we have also perused the material on record including the report under section 173 of the Code of Criminal Procedure, 1973 ('the Code') and its accompaniments.

5. At the outset, in the context of the alleged complicity of accused No.3, it is necessary to note that the following facts are rather uncontroverted :

(i) An amount of Rs.45,000/- was deposited in the account, bearing No. 412105500010 of accused No.3 on 20 th January Shraddha Talekar PS 7/22 cri.apeal-118-2021-J.doc 2020.

(ii) Secondly, the extract of the said account indisputably reveals that accused No.3 withdrew an amount of Rs.50,000/-, in three tranches, from an ATM.

(iii) Thirdly, in his statement, recorded on 28 th February 2020 by the Customs Authority, accused No.3 confrmed that the sum of Rs.45,000/- was deposited in his account on 20 th January 2020. Accused No.3, however, stated that he was unaware as to who had deposited the said amount and where the cash amount withdrawn by him had been used.

(iv) Fourthly, there is not much controversy over the fact that accused No.3 few back to India from Malaysia on 21 st January 2020 and again travelled to Malaysia on 8th February 2020. On return journey, the accused no.3 came to be apprehend on 27th February 2020 by the Customs Authority.

6. In the backdrop of the aforesaid uncontroverted facts, the submissions canvassed by Ms. Raman and Smt. Pai fall for consideration.

7. Ms. Raman, the learned counsel for the appellant would urge that there is no prima-facie material to establish the nexus of the appellant with either co-accused i.e. accused No.1, accused No.2 or Shraddha Talekar PS 8/22 cri.apeal-118-2021-J.doc Amir Mirza (WA). Amplifying the submission, Ms. Raman submitted that the prosecution case is based on surmises and conjectures. Ms.Raman urged with a degree of vehemence that there is no accusation against the appellant that he had transported or used FICN. At best, the charge is of being a conduit. The deposit of the amount of Rs.45,000/- and withdrawal of the sum of Rs.50,000/-, within a couple of days of the said deposit, if considered in the entire setting of the matter, does not incriminate the appellant even remotely, submitted Mr. Raman.

8. To bolster up this submission, attention of the Court was invited to the fact that the appellant had booked the ticket for return journey dated 21st January 2020, on 3rd January 2020 itself. Similarly, for fying back to Malaysia from Chennai on 8 th February 2020, the appellant had booked the ticket on 27 th January 2020 itself. Thus, there was no casual connection between the alleged deposit of the amount of Rs.45,000/- in the account of the appellant on 20th January 2020, the arrival of the appellant in India on 21st January 2020, on the one hand, and the arrival of the parcel allegedly containing FICN in India on 7 th February 2020 and the appellant's departure to Malaysia on 8 th February 2020, on the other hand.

9. Ms.Raman strenuously submitted that there is no material to impute any knowledge of the commission of illegal act by the co- accused and wanted accused to the appellant. From the perusal of the statement of account of the appellant, according to Ms.Raman, it becomes evident that there were multiple transactions evidencing deposit of various amounts into, and withdrawal from, the account of the appellant. Even if it is assumed that there was some illegality in the fnancial transactions, refected in the said account, the said fact, in the absence of any positive material to establish the nexus between the appellant and the co-accused, is not suffcient to bring the act within the dragnet of the criminal conspiracy and, conseiuently, for the offences for which the appellant has been arraigned. Mere knowledge that some illegal act is being committed by the co-accused is not suffcient, urged Mr. Raman.

10. To lend support to the aforesaid submissions, Ms. Raman placed a strong reliance on the judgment of a learned Single Judge of this Court in the case of Javed Ahmed Abdul Majeed Ansari Vs. State of Maharashtra 1.

11. Per contra, Smt. Pai, the learned Special Counsel for NIA, 1 2014 All M.R. (Cri.) 4934 Shraddha Talekar PS 10/22 cri.apeal-118-2021-J.doc stoutly submitted that the material on record unmistakably indicates the complicity of the appellant. Not only the appellant has conceded that the amount of Rs.45,000/- was deposited in his account but there is a statement of the co-accused (Danish- accused No.1), recorded under section 108 of the Customs Act, which clearly indicates that, at the instance of Amir (WA), the accused No.2 had deposited the said amount in the account of the appellant. In the absence of any explanation as to the circumstances in, and the purpose for, which the said amount came to be deposited in the account of the appellant, there is no escape from the inference that the appellant was also a co- conspirator. Multiple visits to Malaysia and the multiple transactions, when the appellant claimed to be working at Malaysia as a salesman to earn livelihood, are reiuired to be considered in the said backdrop. Viewed as a whole, there is material which renders the accusation against the appellant prima-facie true and, thus, the interdict contained in section 43D(5) of the UAPA comes into play with full force and rigour and disentitles the appellant from claiming the relief of bail, submitted Smt. Pai.

12. In order to lend support to the aforesaid submission, Smt. Pai placed a very strong reliance on the judgment of the Supreme Shraddha Talekar PS 11/22 cri.apeal-118-2021-J.doc Court in the case of National Investigation Agency Vs. Zahoor Ahmad Shah Watali 2.

13. We have given our anxious consideration to the rival submissions. In the backdrop of the facts of the case, as they emerge from the record, adverted to above, the pivotal iuestion which wrenches to the fore is whether there is prima-facie material to implicate the appellant as a co-conspirator in the alleged conspiracy of smuggling FICN into India? The thrust of the submission on behalf of the appellant was that even if it is assumed that the amount was deposited and withdrawn from the account of the appellant, the element of mens rea is conspicuous by its absence and, therefore, the appellant cannot be designated as a co-conspirator, even prima-facie.

14. To appreciate this submission, the true nature and import of the offence of criminal conspiracy is reiuired to be considered. It is trite that conspiracy to commit an offence is by itself a substantive offence and entails punishment. Every individual offence committed in pursuance of such conspiracy is separate and distinct offence for which the offenders are liable to be punished, independent of the offence of conspiracy. It is eiually well recognised that the conspiracy is hatched in secrecy. The 2 (2019) 5 SCC 1 Shraddha Talekar PS 12/22 cri.apeal-118-2021-J.doc prosecution is not necessarily obliged to establish that the conspirators expressly agreed to do or cause to be done the illegal act. The agreement may be proved by necessary implication and inferred from the act, conduct and attendant circumstances.

15. The principles governing the law of conspiracy were expounded by the Supreme Court in the case of State through Superintendent of Police, CBI/SIT Vs. Nalini and Ors. 3

16. We are afraid to accede to the broad submission on behalf of the appellant that there should be a direct nexus between all the co-conspirators. The law recognizes that there can be a general conspiracy and separate conspiracies wherein a group of persons act together in furtherance and execute a part of the general conspiracy. In such cases, the doctrine of plurality of means in execution of a larger and general conspiracy is resorted to.

17. A proftable reference in this context can be made to a judgment of the Supreme Court in the case of Ajay Agarwal Vs. Union of India & Ors.4, wherein the Supreme Court expounded several or different models or techniiues to broach the scope of conspiracy. One of the model was that of a chain, where each party performs even without knowledge of other, a role that aids 3 (1999) 5 SCC 253 4 (1993) 3 SCC 609 Shraddha Talekar PS 13/22 cri.apeal-118-2021-J.doc succeeding parties in accomplishing the criminal objectives of the conspiracy. The Supreme Court gave the illustration of procuring and distributing narcotics or an illegal foreign drug for sale in different parts in which confederates in the general conspiracy execute their respective parts in the larger conspiracy. The observations of the Supreme Court in paragraph No. 24 are instructive and thus extracted below :

> "24 .....Thus, an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. The law had developed several or different models or techniiues to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of other a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. An illustration, of a single conspiracy, its parts bound together as links in a chain, is the process of procuring

> and distributing narcotics or an illegal foreign drug for sale in different parts of the globe. In such a case, smugglers, middlemen and retailers are privies to a single conspiracy to smuggle and distribute narcotics.

The smugglers knew that the middlemen must sell to retailers-, and the retailers knew that the middlemen must buy of importers of someone or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers, and those at the other end knew that it had not begun with their settlers. The accused embarked Shraddha Talekar PS 14/22 cri.apeal-118-2021-J.doc upon a venture in all parts of which each was a participant and an abettor in the sense that, the success of the part with which he was immediately concerned, was dependent upon the success of the whole. It should also be considered as a spoke in the hub. There is a rim to bind all the spokes to gather in a single conspiracy. It is not material that a rim is found only when there is proof that each spoke was aware of one another's existence but that all promoted in furtherance of some single illegal objective. The traditional concept of single agreement can also accommodate the situation where a well defned group conspires to commit multiple crimes so long as all these crimes are the objects of the same agreement or continuous conspiratorial relationship, and the conspiracy continues to subsist though it was entered in the frst instance.....t (emphasis supplied)

18. The aforesaid pronouncement was followed with approval by a three Judge Bench of the Supreme Court in the case of State of Maharashtra & Ors. Vs. Som Nath Thapa and Ors. 5. In the said case, (Bombay bomb blasts), the Supreme Court held that, it would not be necessary to establish that the accused knew that the RDX and/or bomb was/were meant to be used for bomb blast at Bombay, so long as they knew that the material would be used for bomb blast in any part of the country. The Supreme Court adverted to the principle of plurality of means. The observations of the Supreme Court in paragraphs 22 to 24 illuminatingly postulate the legal position :

> "22. As in the present case the bomb blast was a result of chain of actions, it is contended on behalf of the prosecution, on the strength of this Court's decision in Yash Pal Mittal vs. State of Punjab 1977 (4) 5 (1996) 4 SCC 659 Shraddha Talekar PS 15/22 cri.apeal-118-2021-J.doc SCC 540, which was noted in para 9 of Ajay Aggarwal's case that of such a situation there may be division of performances by plurality of means sometimes even unknown to one another; and in achieving the goal several offences may be committed by the conspirators even unknown to the committed. All that is relevant is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy, even though there may be sometimes misfre or over-shooting by some of the conspirators.
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> 23. Our attention is pointedly invited by Shri Tulsi to what was stated in para 24 of Ajay Aggarwal's case wherein Ramaswamy, J. stated that the law has developed several or different models or techniiue to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of the other, a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. The illustration given was what is done in the process of procuring

> and distributing narcotics or an illegal foreign drug for sale in different parts of the globe. In such a case, smugglers. Middleman privies to a single conspiracy to smuggle and distribute narcotics. The smugglers know that the middlemen must sell to retailers and the retailers know that the middlemen must buy from importers. Thus the conspirators at one end at the chain know that the unlawful business would not, and could not, stop with their buyers, and those at the other end know that it had not begun with settlers. The action of each has to be considered as a spoke in the hub - there being a rim to bind all the spokes together in a single conspiracy.

24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in iuestion may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in iuestion could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use. When can charge be framed ?t Shraddha Talekar PS 16/22 cri.apeal-118-2021-J.doc (emphasis supplied)

19. Thus, the Supreme Court has exposited in clear and explicit terms that when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.

20. We are mindful of the fact that the aforesaid pronouncement was rendered in the backdrop of the nature of the goods, i.e. RDX/ bombs. The goods or services which are per se capable of being put to an unlawful use, obviously stand on a different footing. It will be easy to impute intent from the knowledge of the accused where the goods or services fall in such category that they can be put to unlawful use like narcotic drugs, arms and ammunition. In the instant case, the Court is confronted with the iuestion of deposit of an amount in the account of the appellant by the co-accused and called upon to consider whether there is prima-facie material to infer the reiuisite 'guilty' intent.

21. The attendant circumstances and statements of the appellant and the co-accused Danish (A1) recorded by the Customs Shraddha Talekar PS 17/22 cri.apeal-118-2021-J.doc Authority provide a legitimate prima-facie answer. Accused No.1 claimed that he had solicited money from the Amir (WA) and thereupon (WA) offered him to forward FICN in consideration of genuine currency notes of half the denominational value of forged currency notes. Accused No.1 claimed to have deposited the amount of Rs.45,000/- in the account of the appellant on the instructions of the WA. As indicated above, there is no dispute about the deposit of the amount of Rs.45,000/- and withdrawal of the sum of Rs.50,000/-, within a couple of days, by the appellant. Indeed, the appellant feigned ignorance about the identity of the person who deposited the said amount of Rs.45,000/- in his

account, though the intimation about the said deposit was not disputed.

22. The situation which thus obtains is that there is evidence to indicate that amount was deposited in the account of the appellant by the co-accused Danish, accused No.1, who, in turn, allegedly received FICN dispatched from Malaysia. Those forged currency notes were circulated by Danish, accused No.1. A FICN, circulated by Accused No.1, was seized. Upon inspection, it was found to be a High Quality Counterfeit Note.

23. At this juncture, had the appellant offered a plausible Shraddha Talekar PS 18/22 cri.apeal-118-2021-J.doc explanation as to the identity of the person who deposited the said amount and its purpose, the nature of the act, i.e. credit of the amount, which is not per se objectionable, would have eroded the potency of the accusation. When confronted with multiple transactions in the said account, the appellant offered an explanation that those amounts were deposited in his account by persons, at the instructions of one Mr.Azam based in Malaysia, and he withdrew those amounts in cash and passed/transferred the same to different persons as directed by the said Mr. Azam and earned commission. An endeavour was thus made to explain away the transactions as being one of money laundering (hawala) nature.

24. In contrast, the appellant claimed that he was working as a Salesman in a shop at Malaysia on daily wage basis for livelihood. In the backdrop of the situation in life of the appellant, the appellant, the sum of Rs.45,000/-, cannot be said to be so small an amount as not to arouse iniuisitiveness on the part of the appellant about the source of credit. Mere feigning ignorance, in the aforesaid circumstances, is not, therefore, suffcient to indicate that the accusation against the appellant is not prima-facie true.

25. At this juncture, a useful reference can be made to the Shraddha Talekar PS 19/22 cri.apeal-118-2021-J.doc observations of the Supreme Court in the case of National Investigation Agency Vs. Zahoor Ahmad Shah Watali (Supra), wherein the nature and import of the proviso of sub-section (5) of section 43D of the UAPA Act expounded :

> "23 By virtue of the proviso to subsection (5), it is the duty of the Court to be satisfed that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise.

Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is reiuired to record its opinion that there are reasonable grounds for believing that the accused is "not guiltyt of the alleged offence. There is degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is "not guiltyt of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is "prima faciet true. By its very nature, the expression "prima facie

truet would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the frst information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and suffcient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is "prima facie truet, as compared to the opinion of accused "not guiltyt of such offence as reiuired under the other special enactments. 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 Shraddha Talekar PS 20/22 cri.apeal-118-2021-J.doc satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.t

26. The reliance placed on behalf of the appellant on the judgment in the case of Javed Ahmed Abdul Majeed Ansari (Supra) does not advance the cause of the appellant. In the said case, the accusation against the applicant was that he had played a role in shifting fve boxes containing arms and explosives from the Tata Indica Car and had abetted the illegal activities of the co-accused. On an analysis, the learned Single Judge found that there was no material to attribute the reiuisite knowledge to the applicant therein. The observations in paragraph Nos. 30 and 31 make the position explicitly clear :

> 30 The restrictive provision under Section 43D of the UAP Act with respect to the grant of bail is not similar to the one contained in the M.C.O.C. Act, and has been worded differently. It contemplates that a person accused of having committed an offence punishable under Chapter IV and Chapter VI of the UAP Act shall not be released on bail if there are reasonable grounds for believing that the accusation against such person is prima facie true. Perhaps, this phrase puts a greater restriction on the powers of the court than is put by the aforesaid provisions of the M.C.O.C. Act. However, inspite of the difference in the phraseology, there would be no basic difference in the practical application of these provisions. All that the se provisions lay down is that a person arrested on the accusation of having committed the offence contemplated by the said provisions should not be released on bail, if there would be a prima facie case of such offence against him. If a rational and reasonable doubt is felt in that regard, then the court would not be precluded from granting bail.

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30. In this case, there is no material to indicate that the applicant was a conspirator in respect of the conspiracy which is the subject matter of the present case, viz of procuring arms, ammunitions and explosives in a huge iuantity, transporting them and using them for creating terrorists acts by killing some political leaders., etc. There is absolutely no material to show that the applicant had agreed to commit any such acts. In fact, if the statements made in the chargesheet, the affdavit in reply fled by the Investigating Offcer, and the Brief synopsis of the prosecution case submitted in writing by the learned Special Public Prosecutor, are carefully examined, it becomes clear that the prosecution has

avoided - and rightly so -to make a claim that the applicant was one of the conspirators in respect of the aforesaid conspiracy. It may be recalled that the allegations against the applicant are worded rather guardedly - such as - that the applicant had played an active role in attempting to conceal the Car in his warehouse. That,he had done so with the knowledge that he was furthering an illegal act and that he had abetted illegal activities of the co accused , etc. It is true that there is material to indicate that the applicant had agreed to do some illegal acts, but that would not make him conspirator in respect of the main conspiracy. At the most, it can be said that the applicant knowingly handled arms and ammunitions, but in that case, the crime committed by him would be of a different degree of criminality.t

27. In the case at hand, the material prima-facie does not appear to be such that the appellant could extricate himself on the premise that though he had the knowledge that the amount of Rs.45,000/- was deposited in his account yet he was not aware of the purpose for which the said amount was deposited. At the cost of repetition, it needs to be recorded that the appellant had the opportunity, at the very initial stage, to explain the purpose for which the said amount was deposited. No such explanation was Shraddha Talekar PS 22/22 cri.apeal-118-2021-J.doc forthcoming, even when the bail application was considered by the learned Special Judge, NIA Court.

28. For the foregoing reasons, we are persuaded to hold that the interdict contained in section 43D(5) of UAPA operates with full force and vigour. In the circumstances, no fault can be found with the view of the learned Special Judge that the bar under section 43D(5) of UAPA came into operation. Resultantly, no interference is warranted in the impugned order.

29. Hence, the following order :

ORDER The appeal stands dismissed.

We, however, clarify that the consideration is confned to entitlement for bail and the NIA Court shall not be infuenced by any of the observations made in the further proceedings of the trial.

[N.J. JAMADAR, J.] [S.S. SHINDE, J.]

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