

IN THE COURT OF THE METROPOLITAN SESSIONS JUDGE-CUM-
SPL. JUDGE FOR TRIAL OF NIA ACT CASES: AT VIJAYAWADA

PRESENT:- SRI G.DURGAIAH,
IV ADDL.DISTRICT & SESSIONS JUDGE-CUM-
JUDGE, FAMILY COURT, VIJAYAWADA.

FAC.METROPOLITAN SESSIONS JUDGE.

MONDAY, THIS THE 28th DAY OF SEPTEMBER, 2020

E-FILING CASE No.AP/10/CRL.M.P./52626/2020
in S.C.No.39/2020 connected with Re.No.5/2019/NIA/HYD

Between:-

Sanjay Kumar, S/o.Girdhari Lal, Hindu, Aged
21 years, R/o.Ward No.3, Ladori Khas (141),
Nurpur Tehsil, Kangra, Himachal Pradesh
State-176 203, presently working in Indian
Navy at Colaba Fort, Mumbai, Maharashtra
State.



....Petitioner/A-11.

AND

State, Rep. by Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad.

....Respondent/Complt.,

This petition is coming on 23.09.2020 before me for hearing in the presence of Sri K.V.Sarma and Smt.K.Sujatha, Advocates for the petitioner and of Sri G.Siddiramulu, Public Prosecutor on behalf of the Respondent/NIA through video conference by using Blue Jeans Application at the home office of the Presiding Officer, upon hearing and considering the material on record and the petition having stood over till this day for consideration, this Court delivered the following:-

ORDER

This bail application is filed through e-filing by giving advance notice to the learned Public Prosecutor for NIA U/s.437 and 439 of the Criminal Procedure Code, 1973 to enlarge the petitioner/A-11 on bail for the offences punishable U/s.120-B, 201 of the Indian Penal Code, 1860 r/w.sections 17, 18 of the Unlawful Activities (Prevention) Act, 1967 r/w.sections 3, 4 and 5 of the Official Secrets Act, 1923.

2) The brief averments of the petition are that the petitioner/A-11 was falsely implicated in Cr.No.1/2019 of Counter Intelligence Police for the alleged offences punishable U/s.120-B, 201 of the Indian Penal Code, 1860 r/w.sections 17, 18 of the Unlawful Activities (Prevention) Act, 1967 r/w.sections 3, 4 and 5 of the Official Secrets Act, 1923. The respondent/police arrested the petitioner on 29.12.2019 and produced before the learned IV Addl. Chief Metropolitan Magistrate's Court, Vijayawada and he was remanded to judicial custody and since then he has been in District Jail, Vijayawada. The petitioner/A-11 was in judicial custody since 29.12.2019 i.e., 199 days. The petitioner did not commit any offence, he was innocent, he is nothing to do with the alleged offences and he was falsely implicated in the case for statistical purpose. The petitioner hails from a respectable poor family and he is working in Indian Navy. The petitioner is a law abiding citizen and he is ready to furnish sureties and also does undertakes to make himself available for interrogation at any time. The petitioner is permanent resident of Himachal Pradesh State and he has fixed abode in Himachal Pradesh State and jumping bail will not arise. There is no prima facie case against the accused and keeping the accused in judicial custody is affecting his fundamental right of liberty. Hence, requested to enlarge the petitioner/A-11 on bail.

3) The respondent/NIA filed counter by denying the averments of the petition, contending that case in RC 05/2019/NIA/HYD dated 29.12.2019 U/s.120B & 201 of the IPC, Sections 17 and 18 of the UA (P) Act, 1967 and section 3 of the Official Secrets Act, 1923 had been re-registered by NIA Hyderabad arising out of FIR No.01/2019 dated 16.11.2019 of Counter Intelligence PS, Intelligence Department, Andhra Pradesh police, Vijayawada in compliance of the order of Government of

India, Ministry of Home Affairs (CTCR Division), North Block New Delhi,
vide F.No. 11011/64/2019/NIA dated 26th December 2019.

Further submitted that on 15.11.2019 at 22.30 hours, Counter Intelligence PS, Andhra Pradesh received credible information that during 2011 to 2019, some un-identified foreign nationals entered into conspiracy with some unidentified persons in places like Visakhapatnam, Mumbai etc., in order to carry out anti-national activities in India. Money is being transferred through various legal/illegal channels to some accounts in the names of certain unknown persons of Visakhapatnam and other places for the purpose of recruiting agents for collection and communication of secret information pertaining to sensitive and vital installations such as defense establishments, space research stations etc., across the country. In furtherance of the conspiracy, Indian citizens are recruited as their agents by offering money and by transferring amounts periodically into their bank accounts in order to obtain crucial information pertaining to Indian war-ships, submarines by committing subversive acts such as spying, taking sensitive photographs, video-graphs of restricted/prohibited areas with a common objective for causing damage and destruction to the properties in India, which are likely to threaten the unity, integrity and sovereignty.

Further submitted that during investigation, 15 accused including 11 employed in the service of Indian Navy, were arrested on different dates and 14 accused persons were charge-sheeted on 15.06.2020 and they are presently lodged in Central Jail Rajahmundry and Special Prison for Women, Rajahmundry under judicial custody. Investigation revealed that the foreign agents/spies used fraudulently obtained Indian mobile numbers to contact the accused through WhatsApp with different online identities. Some of such mobile numbers were provided to the

handlers by the accused themselves. The analysis of Internet Protocol (IP) addresses used by the said online handlers received while operating their mobile numbers, WhatsApp, Facebook and Gmail accounts indicate that the same were being operated using ISPs of different foreign countries such as Pakistan, UK, UAE etc. It has also been revealed that the same IP address was used by multiple online handlers at different/same time for using aforesaid social media accounts. Further, the accused/Navy personnel deliberately added the online handlers to their private WhatsApp groups where many other officials of Indian Navy were also there as members. It was done by accused so as to facilitate the online handlers to have easy and regular access to all the confidential and classified information related to Navy establishments being shared on such WhatsApp groups. The foreign agents/spies succeeded to obtain most of the sensitive information related to Indian Navy establishments and posting details of navy officials across the country effortlessly without any suspicion. During investigation Chief Investigating Officer has collected prosecutable evidence against the petitioner/A-11 and filed charge-sheet against him U/s.120B & 201 of The Indian Penal Code 1860, section 18 of The Unlawful Activities (Prevention) Act, 1967 and sections 3, 4 & 5 of The Official Secrets Act, 1923 on 15.06.2020 and this court has taken cognizance on 16.06.2020 vide SC No. 39/2020 on the said offences.

Further submitted that the case was initially registered on 16.11.2019 and after thorough investigation on the money trail and identifying the depositors & beneficiaries the first arrest was made on 19.12.2019 in the instant case. Investigation revealed that a prima facie case is made out against the petitioner/A-11, hence, he was arrested on 28.12.2019 from INS Agnibahu, Naval Dockyard Mumbai in the presence



of two navy officials. Subsequently, his mobile phones along with other materials/documents required for the investigation were seized from his office premises and personnel possession of the petitioner/A-11. The petitioner/A-11 and along with 12 other accused was remanded to police custody of NIA from 18.01.2020 to 22.01.2020 by this Court. During custodial examination, he admitted his role in the instant case and voluntarily disclosed that and voluntarily disclosed about his association with foreign handlers/spies Ashi Rajput @ Harish. He disclosed that his navy friend/batch-mate Avinash Somal (A-18) introduced him to handler Ashi Rajput@ Harsih stating that he will get the extra monetary benefits apart from salary. Harsih contacted the petitioner/A-11 over WhatsApp and started eliciting sensitive & classified information related to Navy establishments. Further, A-11 made voluntarily disclosure about his social media accounts on which he was in contact with their foreign agents/spies. However, he stated that he used to delete the WhatsApp chats between his handler and himself on the directions of handler Harish which establishes A-11 intention. Further, extraction of his another Facebook account was also done in the presence of independent witnesses during the police custody. The scrutiny of extracted Facebook data and expert opinion on his mobile phones reveals that the accused was found in touch with the said foreign agent/spy Ashi Rajput @ Harish over Facebook and end-to-end encrypted messaging services WhatsApp.

Further submitted that the petitioner/A-11 secretly shared a lot of classified and sensitive information related to Navy establishment with said 'Ashi Rajput @ Harish Rajput' regarding locations/ movements of numerous Indian Navy ships/submarines over WhatsApp for monetary benefits comprising with national security. He used to gather sensitive & classified information related to ships/submarines movements from his

batch-mates and others navy personnel posted in other ships/submarines. During the relevant period he contacted many of his batch-mates over Facebook and took their WhatsApp numbers for said the purpose. Petitioner/A-11 received money of Rs. 18,003/- through his HDFC A/C No. 50100196708905 from said handlers Ashi Rajput @ Harish on different occasions and the amount was deposited by arrested/charge-sheeted accused Mohd Haroon Lakdawala (A-5) who was in direct link with Pakistan agents/spies Ali @ Akbar, Rizwan and other agents/spies. FSL examination report of mobile phones & SIM card seized from A-11 revealed that he deliberately deleted his WhatsApp incriminating chat with his handler and he saved WhatsApp number of his handler as Bhai to avoid suspicion on his illegal activities. Images containing the names/rank details of Navy personnel and some videos related to some military exercises of artillery tanks and firing exercise, are found in his mobile phone. Further, some photographs of 'Bureau of Sailors' website and 'Ship Defect Reporting System' are also found. The petitioner/A-11 deliberately added mobile number 9898606736 of 'Ashi Rajput @ Harish' in a WhatsApp group of his Navy batch-mates named 'RoCkeRs of EKL 01/17', wherein many of the group members working in Navy, shared their place of posting and also the location/movement of various ships/submarines of Indian Navy on being asked by A-11. The petitioner/A-11 deliberately passed on the locations/movements & nature of duty of Indian Navy ships/ submarines to his foreign online handlers 'Ashi Rajput' through end-to-end encrypted messaging services WhatsApp. Such information can be used for terrorist activities in India by any alien country. In spite of knowing it, the petitioner/A-11 kept on sharing all the sensitive and strategic information with foreign agents/spies for monetary benefits and thereby compromised with



national security. Further, A-11 deliberately hid the fact of his conversation with said foreign agents/spies, from their superior officers. This clearly shows the intention of petitioner and his role in the commission of offence and culpability in knowingly facilitating the preparation for commission of a terrorist act.

Further submitted that the petitioner/A-11 as investigation revealed that awareness programmes regarding prohibition on sharing of sensitive and classified information and its consequences thereafter were conducted from time to time by the Executive Officer and Divisional Officer of Indian Navy to sensitize the navy personnel/sailors. These programmes were attended by all the sailors present on board. Do's & Don'ts and SOPs for usage of smart phones are promulgated by the concerned ships/submarines, which are disseminated to sailors at regular intervals. It indicates that the petitioner/A-11 shared such sensitive information voluntarily, intentionally and knowingly to the foreign agents/spies knowing the consequences. The petitioner/A-11 undergone basic, ship and professional trainings, specialized course/trainings. Being trained soldier his prime duty was to ensure safety, security of ships/submarines where he was posted from the enemy countries and terrorists whereas the petitioner/A-11 facilitated the foreign powers/enemy countries to carryout terrorist acts by communicating the updated sensitive information about the location/movements of his ship as well as other ships which was obtained from his navy friends/batch-mates. He deleted WhatsApp chats with his handler to avoid detection of his anti-national activities and also to hide his identity over network and culpability in crime, if he was apprehended. Moreover, the petitioner/A-11 saved the contact

number of his online handler with pseudonym name Bhai to avoid suspicion on their activities.

Further submitted that the petitioner/A-11 is active on social media, hence, online handler/foreign spy Harish befriended him on Facebook and recruited him as his informer. The foreign agents/ spies arranged money to Petitioner/A-11 who used to share classified official secrets of Indian Navy establishments, from time to time through arrested charge-sheeted accused Mohd Haroon Lakdawala (A-5) who was in direct link with Pak ISI agents Ali @ Akbar, Rizwan and others. The petitioner/A-11 deliberately passed on the confidential and sensitive information regarding Indian Naval establishments to foreign agent/spy through end-to-end encrypted messaging services WhatsApp and not through standard voice calls or text messages despite knowing the fact that it is an offence and detrimental to the national interest. On obtaining such information Pak based terrorist organizations have carried out terrorist attacks at several vital installations in India. Sensational among them include the attack on Indian Parliament (2001), J&K Assembly (2001), Mumbai Taj Hotel and other places (2008), Pathankot Airbase (2016), Uri Army Brigade (2016). A common trend in all such attacks has been that Pakistani Agencies (like ISI) had played a key role in tandem with the terrorist cadres in conducting reconnaissance at the vital installation before undertaking the actual attacks. In this case, it can be implied that the main purpose of conducting reconnaissance on strategic Naval Warship and establishments is to assist the proliferating terrorist groups in Pakistan, like LeT, JeM to plan terrorist attacks. The petitioner/A-11 is a trained soldier of disciplined force i.e. Indian Navy and he is well aware of the fact that sharing photographs, videos and other confidential and



sensitive information with any foreign national is not only a punishable offence but also very much detrimental to the security and sovereignty of the country. The accused was well-aware that the information clandestinely passed on by him to his associates based in foreign countries can very well be used by any alien or enemy country to gain strategic military advantage over India and even plan & launch surprise and ghastly terror attacks on India that might adversely attack the sovereignty of the country.

Further submitted that as per the decision of the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the case of **State represented by National Investigation Agency through Dy. Superintendent of Police, Hyderabad vs. Saddam Hussain** vide order dt.7.11.2016 in CrI.A.791 and 792 of 2016 held that Sections 437 and 438 of the Criminal Procedure Code have no application for the offence U/s.43-D of the Unlawful Activities (Prevention) Act, 1967. Hence, requested to dismiss the petition.

4) Heard the learned counsel for petitioner/A-11 and the learned Public Prosecutor for respondent/NIA through video conference by using Blue Jeans Application at home office of the Presiding Officer.

5) The point for consideration is:

“Whether the petitioner/A-11 can be granted bail for the reasons assigned in the petition?”

POINT:

6) The learned counsel for petitioner submitted written arguments contending that the charge sheet filed by the respondent does not reveal any act or preparatory act of the petitioner to attract the offence punishable U/s.15 of the Unlawful Activities (Prevention) Act, 1967.

They simply made allegations that the petitioner shared the images and sensitive information with regard to ships and submarines, except bare allegations in the charge sheet. The petitioner actually working in Indian Navy. He was under the impression that he is working under Navy Intelligence and received amount for that purpose only and in the charge sheet it is also clearly mentioned that the superior officer also saying that the petitioner has not done anything after receiving amount. The petitioner accepted that amount for that purpose only. The photographs which were kept for study purpose only as recently undergone a course. Mere keeping photographs does not constitute terrorist act. Section 15 of the Unlawful Activities (Prevention) Act, 1967 does not attract the ingredients of terrorist act and sections 16, 17 and 18 also does not attract the ingredients of terrorist act.

Further submitted that there has always been news on "online websites", social media and T.V. channels also. There is online website which gives complete information about the ships and current locations of INS Deepak and other vessels. Therefore, such an information cannot be called as secret information. The online information is a public document. It can be assessed by common man, therefore, it does not come under Secrets Information Act, 1932. So also, does not attract the provisions of the Unlawful Activities (Prevention) Act, 1967. Even as per regulations of the Navy, photography is not at all an offence. As per the Central Secretariat Office Manual, top secrets never passed the below grade of Under Secretary of Union Government of India. Even there is no such possibility to be expected with the petitioner. The Hon'ble Apex Court ordered in National Investigating Agency Vs. Zaheer Ahmad Shah Watani, following points to be considered for deciding an application for bail in the Unlawful Activities (Prevention) Act, 1967:



- i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence
- ii) Natural gravity of charge
- iii) Severity of the punishment and event of the conviction
- iv) Danger of the accused absconding or fleeing, if released on bail.
- v) Character, behaviour, means, position and standing of the accused.
- vi) Likelihood of the offence being repeated.
- vii) Reasonable apprehension of the witness being tampered with and
- viii) Danger, of course, of justice, being thwarted by grant of bail.

There is no prima facie material to connect the accused with the alleged offences in this case. The material collected by the investigating agency in reference to the accusation against the concerned accused in the first 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 said offence. There is no material on record to show that the petitioner is having requisite mens rea and he directly or indirectly involved in the commission of organised crime. The petitioner is a Navy employee, there is no question of absconding. His antecedents and character already verified before joining in Navy. He never made any offence. All the witnesses are official witnesses, as such, the question of tampering evidence does not arise. The petitioner belongs to a respectable family. He will prove his innocence during trial. He is a law abiding citizen. Therefore, requested to grant bail to the petitioner/A-11.

7) On the other hand, the learned Public Prosecutor for NIA vehemently opposed to grant bail stating that investigation is not yet completed. The foreign agents/spies fraudulently obtained Indian mobile

numbers to contact the accused through WhatsApp with different online identities. Some of such mobile numbers were provided to the handlers by the accused themselves. The I.P. addresses used by the said online handlers received while operating their mobile numbers, WhatsApp, Facebook and G-mail accounts indicate that the same were being operated using ISPs of different foreign countries such as Pakistan, UK, UAE etc. It has also been revealed that the same IP address was used by multiple online handlers at different/same time for using aforesaid social media accounts. The accused/navy personnel deliberately added the online handlers to their private WhatsApp groups where many other officials of Indian Navy were also there as members. It was done by accused so as to facilitate the online handlers to have easy and regular access to all the confidential and classified information related to Navy establishments being shared on such WhatsApp groups. The foreign agents/spies succeeded to obtain most of the sensitive information related to Indian Navy establishments. They collected material to connect the petitioner/A-11 for the offences punishable under Indian Penal Code 1860, Unlawful Activities (Prevention) Act, 1967 and Official Secrets Act, 1923. The mobile phones along with other materials/documents required for the investigation were also seized from the petitioner/A-11. The petitioner also admitted his role in the instant case and made voluntarily disclosure about his social media accounts, on which he was in contact with their foreign agents/spies. The extraction of his Facebook account was done in the presence of independent witnesses during the police custody. The scrutiny of extracted Facebook data and expert opinion on his mobile phones reveals that the accused was found in touch with his foreign agent/spy over Facebook messenger with 'Ashi Rajput @ Harish'. The petitioner/A-11



secretively shared a lot of classified and sensitive information related to Navy establishment with said 'Ashi Rajput @ Harish Rajput' regarding locations/ movements of numerous Indian Navy ships/submarines over WhatsApp. The accused collected such information from his Navy batch-mates and also took photographs and videos of restricted/prohibited areas of Naval establishments, for further sharing the same to his online handlers, where mobile phones for taking photographs and videos are strictly prohibited. FSL examination report of mobile phones & SIM card seized from A-11 revealed that he deliberately deleted his WhatsApp chat with 'Ashi Rajput @ Harish Rajput' to avoid suspicion on his activities. The petitioner/A-11 kept on sharing all the sensitive and strategic information with foreign agents/spies for monetary benefits and thereby compromised with national security. The petitioner/A-11 deliberately hides the fact of his conversation with said foreign agent/spy, from their superior officers. This clearly shows the intention of petitioner and his role in the commission of offence and culpability in knowingly facilitating the preparation for commission of a terrorist act. The petitioner/A-11 is a trained soldier. His prime duty was to ensure safety, security of ships/submarines, where he was posted from the enemy countries and terrorists whereas the petitioner/A-11 facilitated the foreign powers/enemy countries to carryout terrorist acts by communicating the updated sensitive information about the location/movements of his ship as well as other ships which was obtained from his navy friends/batch-mates. He deleted WhatsApp chats with his handler to avoid detection of his anti-national activities. The petitioner/A-11 saved the contact numbers of his online handler with different pseudo names to avoid suspicion on their activities. Hence, requested to dismiss the petition.

8) The learned counsel for petitioner/A-11 himself contended in the written arguments as well as in the oral arguments that the petitioner accepted the amounts deposited in his bank account under the impression that it is an incentive for working under Navy Intelligence. It is not the case of the petitioner that amount received from unknown persons, is part of salary. So also, it is not the case of the petitioner that the amounts deposited by the Indian Navy in its official capacity. The petitioner is supposed to know service conditions and rules about his salary particulars and other allowances if any. He cannot be expected to receive amount from other unknown persons unauthorisedly. The acceptance of amount itself shows the petitioner intentionally shared communication for wrongful gain by facilitating the foreign agents/spies, such an information and behaviour of the petitioner affects the unity, integrity and sovereignty of India and constitute an offence under section 18 of the Unlawful Activities (Prevention) Act, 1967. The respondent produced material to connect the petitioner for the above mentioned offence. The material placed by the respondent and arguments advanced by the learned counsel for petitioner by admitting the acceptance of amount from unknown persons and sharing photos etc., coupled together goes to show the prima facie that the case of the respondent is true and correct. Believing the material placed before this Court along with charge sheet, this Court took cognizance of the offences against the petitioner. Once the Court believes that the accusation against the petitioner is prima facie true, section 43(D) of the Unlawful Activities (Prevention) Act, 1967 takes away the discretion of the Court to grant bail. To substantiate his plea, he placed reliance on the following decisions:

1. In the case of National Investigation Agency, Hyderabad Vs. Saddam Hussain reported in 2017(2) ALD (CrI.), 197 A.P.



2. In the case of Afzal Khan @ Babu Murtuzakhan Pathan Vs. State of Gujarat reported in AIR 2007 SC 2111.
3. In the case of National Investigation Agency Vs. Zahoor Ahmad Shah Watali reported in 2019 (5) SCC 1
4. In the case of Status of U.P. through CBI Vs. Amarmani Tripathi
5. In the case of State Vs. Jaspal Singh reported in AIR 1984 SC 1503
6. In the case of Thasleem Vs. State of Kerala reported in 2016 (1) KLT 721.

9) Both sides relied upon the guidelines issued by the Hon'ble Apex Court for granting or rejecting bail in State of U.P. through CBI Vs. Amarmani Tripathy and the same is reiterated in the case of National Investigation Agency Vs. Zahoor Ahmad Shah Watali. The guidelines given by the Hon'ble Apex Court in the aforesaid decisions have to be taken into consideration for granting or rejecting bail. Now the point for consideration is:

“Whether there is any prima facie material to connect the petitioner for the above offences?”

10) It is the specific case of the prosecution/respondent that on 15.11.2019 at 22.30 hours, Counter Intelligence P.S., Andhra Pradesh received credible information that during 2011 to 2019, some un-identified foreign nationals entered into conspiracy with some unidentified persons in places like Visakhapatnam, Mumbai etc., in order to carry out anti-national activities in India. Money is being transferred through various legal/illegal channels to some accounts in the names of certain unknown persons of Visakhapatnam and other places for the purpose of recruiting agents for collection and communication of secret information pertaining to sensitive and vital installations such as defense establishments, space research stations etc., across the country. In furtherance of the conspiracy, Indian citizens

are recruited as their agents by offering money and by transferring amounts periodically into their bank accounts in order to obtain crucial information pertaining to Indian war-ships, submarines by committing subversive acts such as spying, taking sensitive photographs, videographs of restricted/prohibited areas with a common objective for causing damage and destruction to the properties in India, which are likely to threaten the unity, integrity and sovereignty. The same was registered as FIR No.01/2019 dated 16.11.2019 for the offences punishable U/s.120B & 201 of the IPC, sections 17 and 18 of the UA (P) Act, 1967 and sections 3, 4 and 5 of the Official Secrets Act, 1923. Basing on the FIR No.01/2019 of Counter Intelligence PS, Intelligence Department, Andhra Pradesh police, Vijayawada, NIA was directed to take-up investigation in the said FIR. Hence, re-registered the above case as Rc.5/2019/NIA/HYD on 29.12.2019 for the offences punishable U/s.120B & 201 of the IPC, sections 17 and 18 of the UA (P) Act, 1967 and sections 3, 4 and 5 of the Official Secrets Act, 1923. During the course of investigation, raids were conducted in the residential premises of A-2 to A-5, A-15 and office premises of A-6 to A-13, A-16 to A-18 and seized some electronic gadgets such as mobile phones, memory cards, sim cards, pen drives, bank documents, identity documents such as Aadhar cards, PAN, passports etc., and other documents from the individual possession and residential/office premises of A-2 to A-13, A-15 to A-18. After interrogation of accused during police custody and seizure of some material to connecting the accused to the above offences, respondent filed charge sheet along with material collected and expert opinion to connect the accused for the above offences. Believing the material placed by the respondent along with the charge sheet, this Court took cognizance of the above offences against the petitioner/A-11.



and other accused. It is not in dispute, A-6 to A-13, A-16 to A-18 are the Navy employees. The arguments advanced by the learned counsel for the petitioner/A-11 in his written arguments reveals that the petitioner / navy employee accepted some amounts which were deposited into their respective bank accounts. The date of deposit and bank account number of the petitioner and the bank account number of A-5 were also mentioned and the mobile numbers of the petitioner and other Navy employees and the mobile numbers of A-4, A-5 and A-15 and foreign agents/spies were also furnished in the charge sheet. The material placed along with charge sheet also prima facie shows that certain amounts were deposited in the bank accounts of A-6 to A-13, A-16 to A-18 from the alleged handlers, foreign agents/spies by name Ashi Rajput @ Harish Rajput, Ali @ Akber and Rizwan, A-4, A5 and A-15, who are not the Navy officials. The petitioner is not disputing the factum of deposit of amounts in his bank account and acceptance of those amounts as such the particulars of bank account number of the petitioner, Agents/spies, A-5 need not be discussed at length. According to the petitioner, he accepted amounts under an impression that he is working under Navy Intelligence. When the petitioner and other Navy employees have been working in Indian Navy, how they expected amounts from unknown persons under impression that they are working under Navy Intelligence. It is not the case of the petitioner that they have been working in Navy Intelligence. They are working as ordinary soldiers in Indian Navy. Therefore, the very acceptance of amounts deposited in the bank account of the petitioner and other Navy employees from unknown persons, who are foreign agents/spies, prima facie probablise the case of the respondent that the petitioner and other Navy employees assisted the foreign agents/spies for wrongful gain and

extended their co-operation in furnishing confidential information relating to Indian Navy Establishments by sharing photos etc unless and until disproved the same during the course trial.

The FSL Report relating to extracted information from the petitioner/A-11 reveals that the petitioner also deleted the conversation and chatting with the foreign agents/spies to avoid the suspicious circumstances. The conduct of the petitioner and other Navy employees reveal the malafide intention of the petitioner and other Navy employees in furnishing information relating to the Indian Navy Ships/Submarines and prohibited areas through WhatsApp and Facebook as directed by the foreign agents/spies. The contention of the learned counsel for the petitioner that except the vague allegations, no material is placed before the Court to connect the accused for the above offences is not sustainable.

11) On perusal of the material available on record, I am of the considered view that there is prima facie material to believe that the allegations against the petitioner/A-11 punishable U/s.120-B, 201 IPC and U/s.18 of the Unlawful Activities (Prevention) Act, 1967 and as such, section 43(D) of the Unlawful Activities (Prevention) Act, 1967 are true and correct. The conduct of the petitioner in chatting, sharing information with foreign agents/spices and deleting the same from WhatsApp and face book also probablise the conspiracy with foreign agents/spies. Admittedly, the petitioner and other Navy employees are working in Indian Navy. They are supposed to maintain secrecy of Indian Navy Establishments, movements of Warships, Submarines and prohibited areas. They are not supposed to share any photos or information relating to Navy Establishments, Warships, Submarines and prohibited areas of Indian Navy Establishments etc. Therefore, there are

grave charges against the petitioner and other Navy employees. The law is well settled by the Hon'ble AP High Court in the case of National Investigation Agency, Hyderabad Vs. Saddam Hussain reported in 2017(2) ALD 197 A.P. that section 43(D) of the Unlawful Activities (Prevention) Act, 1967 takes away the discretion of the Court to grant bail wherever it is of the opinion that there are reasonable grounds for believing that the accusation against the accused is prima facie true. It was also held by the Hon'ble Apex Court in the case of Afzal Khan @ Babu Murtuzakhan Pathan Vs. State of Gujarat that a bail application in a case involving the security of State should be rejected. The Hon'ble Apex Court in the case of National Investigation Agency Vs. Zahoor Ahmad Shah Watali reported in 2019(5) SCC 1 held that in bail application under Unlawful Activities (Prevention) Act, 1967 matters need different approach and further held that when it comes to offences punishable under special enactments, such as the 1967 Act, something more is required to be kept in mind in view of the special provisions contained in Section 43(D) of the 1967 Act, inserted by Act 35 of 2008 with effect from 31st December, 2008. As stated above, the material available on record shows prima facie ground to believe the accusation against the petitioner/A-11 is true and correct and there are grave charges against the petitioner with regard to security of the nation. The conduct of the petitioner/A-11 in accepting amounts from unknown persons and sharing information through WhatsApp and Facebook, deleting chattings and information with an intention to avoid suspicious circumstances reveal the character of the petitioner in assisting the foreign agents/spies for wrongful gain, which is against the code of conduct of the Navy employees. Keeping all these circumstances and the above decisions into mind, I find there is prima facie material to connect


the petitioner/A-11 for the above offences punishable U/s.120-B, 201 IPC and U/s.18 of the Unlawful Activities (Prevention) Act, 1967 and as such, section 43(D) of the Unlawful Activities (Prevention) Act, 1967 applicable to the facts of the case in hand. In view of the guidelines of the Hon'ble Apex Court in State of U.P. Vs. Amarmani Tripathi and National Investigation Agency Vs. Zahoor Ahmad Shah Watali, I am of the considered view that petitioner is not entitled to ask for bail. Accordingly, the point is answered against the petitioner/A-11.

12) In view of my finding on the point, I find there is no valid ground to grant bail to the petitioner/A-11 at this stage. Accordingly, the point is answered against the petitioner/A-11.

13) In the result, the petition is dismissed. Upload the order in the District Court Website. Intimate the same to the learned counsel for the petitioner/A-11 and the learned Public Prosecutor for NIA to their WhatsApp mobile numbers/E-mail I.Ds.

Typed to my dictation by the Grade-I Stenographer of this Court, corrected by me, on this the 28th day of September, 2020.




IV ADDL. DISTRICT & SESSIONS JUDGE-CUM-
JUDGE, FAMILY COURT, VIJAYAWADA.
FAC. METROPOLITAN SESSIONS JUDGE-CUM-
SPL. JUDGE FOR TRIAL OF NIA ACT CASES,
VIJAYAWADA.