

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s).26689/2024

(Arising out of impugned final judgment and order dated 17-11-2023 in CRM (M) No.472/2023 passed by the High Court of Jammu & Kashmir and Ladakh at Jammu)

UNION TERRITORY OF JAMMU AND KASHMIR

Petitioner(s)

VERSUS

PEERZADA SHAH FAHAD

Respondent(s)

(IA No.192810/2024-CONDONATION OF DELAY IN FILING and IA No.192812/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.192811/2024-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

WITH

Diary No(s). 26690/2024 (II-C)

(FOR ADMISSION and I.R. and IA No.196461/2024-CONDONATION OF DELAY IN FILING and IA No.196465/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.196464/2024-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Date : 14-10-2024 These petitions were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE BELA M. TRIVEDI
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Petitioner(s) Mr. Tushar Mehta, Solicitor General
Mr. Kanu Aggarwal, A.A.G.
Mr. Parth Awasthi, Adv.
Mr. Pashupathi Nath Razdan, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1. Delay condoned.
2. Heard the learned S.G., Mr. Tushar Mehta with Mr. Kanu Aggarwal, A.A.G. for the petitioner(s).

3. These two special leave petitions are arising out of the common impugned judgment and order dated 17.11.2023 passed by the High Court of Jammu & Kashmir and Ladakh at Jammu in CRM(M) No.472 of 2023 and CrI.A(D) No.42 of 2022, whereby the High Court has released the respondent on bail, subject to the conditions as mentioned therein, and further partly allowed the quashing petition being CRM(M) No.472 of 2023, quashing the charge framed against the respondent for the offence under Section 18 of UAPA and Sections 121 and 153B of IPC, however, directed that the respondent shall stand tried for the offence under Section 13 of UAPA and Sections 35 and 39 of FCRA.

4. The learned S.G., Mr. Mehta has drawn our attention to the para 28 of the impugned judgment, whereby the High Court has placed reliance on *Schenck Vs. United States* (249 US 47 (1919) : 1919 SCC Online US SC 62). He submitted that the two Constitution Benches in *Babulal Parate vs. State of Maharashtra* (AIR 1961 SC 884) and in *State of Madras vs. V. G. Row* [(1952) 1 SCC 410] and one Three Judge Bench in *Arup Bhuyan vs. State of Assam* [(2023) 8 SCC 745] have rejected the application of the *doctrine of "clear and present danger"*, as laid down in the said judgment, i.e., in *Schenck Vs. United States* (supra), and therefore, the observations made in the impugned judgment would be *per incuriam*. He also submitted that though there was sufficient evidence against the respondent for the offence under Section 18 of UAPA, as framed by the Trial Court, the High Court has wrongly discharged the respondent for the said offence.

5. Though, we find some substance in the submissions made by the learned S.G., Mr. Mehta, we are not inclined to interfere with the impugned order, having regard to the fact that the respondent is on bail since last about one year and since the trial has already commenced.

6. Suffice it to say that having regard to the aforesaid judgments of the Constitution Benches, it is directed that the impugned judgment and order being *per incuriam* shall not be cited as a precedent in any other case. It is also needless to say that any breach of conditions of bail or non-cooperation of the respondent in proceeding with the trial shall entail cancellation of his bail.

7. So far as the discharge of the respondent for the offence under Section 18 of UAPA and Sections 121 and 153B of IPC is concerned, it goes without saying that the Trial Court is empowered to alter the charge at any stage of the proceedings having regard to the evidence on record, in view of Section 216 of the Cr.P.C.

8. We further clarify that the observations made by the High Court in the impugned order shall not come in the way of the Trial Court in proceeding further with the trial in accordance with law.

9. In that view of the matter, both the special leave petitions are dismissed, subject to the above observations.

10. Pending applications, if any, also stand disposed of.

(RAVI ARORA)
COURT MASTER (SH)

(MAMTA RAWAT)
COURT MASTER (NSH)