

**IN THE COURT OF SPECIAL COURT NIA FOR GR.BOMBAY
AT BOMBAY
ORDER BELOW Exh.535
IN
SPECIAL CASE NO. 414 OF 2020**

Hany Banu

.... Applicant/Accused No.12

Versus

The State of Maharashtra

(Through National Investigation Agency) Prosecution

Learned Advocate Mr. D.K. Gaikawad for accused No.12.

Learned S.P.P. Mr. Shetty for NIA

CORAM : HIS HONOUR THE SPECIAL JUDGE

SHRI. Dinesh E. KOTHALIKAR (C.R.NO.25)

DATED : 14th February, 2022.

(DICTATED AND PRONOUNCED IN OPEN COURT)

ORAL ORDER

1. The applicant/accused No.12 who has been arrested on the accusation for commission of offences punishable under Sections 121, 121-A, 124-A, 153-A, 505(1)(b), 115, 120-B, 201 read with 34 of the Indian Penal Code, 1872 and Sections 13, 16, 17, 18, 18-A, 18-B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967, has filed present application for bail under Section 439 of the Code of Criminal Procedure. 1973.

2. The applicant claims that the prosecution has levelled allegations against him that he was the member of the CPI (M), a banned terrorist organisation under the first schedule of the UAP Act

and that the applicant was in correspondence with the members of the CPI (M). It has further been alleged that the applicant possessed documents belonging to the CPI(M) and that he has organised and participated in a committee constituted to organize legal defence for a CPI (M) member, Saibaba and that he was involved in raising funds to help persons charged with the membership of CPI(M) after they were released from prison and that the applicant inculcated Maoist sympathies amongst students and other persons.

3. The applicant claims that all the allegations made by the prosecution against him make out only an offence punishable under Section 38 and 39 of the UAP Act i.e. associating/membership with a terrorist organisation and supporting a terrorist organisation. It is his further contention that there is no material to suggest that the applicant was intended or supported a claim of the cessation or caused disaffection against India or committed an act which disrupts the sovereignty or territorial integrity of India and as such, he claims that the offence under Section 13 is not made out. He has further claimed that offence punishable under Sections 15, 16, 17, 18, 20 of the UAP Act, 121, 121-A and 124-A of IPC are not attracted. He has further claimed that there are over 50 witnesses and that the charge-sheet contains 30,000 pages and therefore, it will take time for the conclusion of trial. Thus, the applicant has claimed to release him on bail.

4. The prosecution has filed reply to the application vide Exh.552.

5. The prosecution has come with the contention that during investigation it is revealed that the applicant is an active member of the CPI (M) and he was in contact with the arrested accused persons Anand, Rona, Arun, Surendra, Sudhir, Varavara Rao, Stan Swamy, and wanted accused Prakash. It is further revealed that the applicant was assigned to complete urban activities of CPI (M) which includes to release accused Sai Baba, who was convicted for his deep links with CPI(M) and membership. The applicant had also organized a programme at Jantarmantar, Delhi. He was an active member of 'Committee for defence and release of Saibaba' wherein the co-accused Rona, Sudhir, Arun and Anand were active members and that he had also organized collecting of money for the said purpose. It was further revealed from the evidence collected during search of the premises of the applicant that code/alias names were used by the CPI(M) for the accused persons.

6. The prosecution has claimed that there is prima facie evidence against the applicant and the co-accused regarding the link with the members of banned organisation and its activities. According to the prosecution the applicant was involved in raising funds to help the CPI (M) cadre, released from prison and that incriminating emails in this regard were recovered from the email account of the applicant.

7. The prosecution has further come with the contention that during investigation it is revealed that the applicant was in contact with Paikhomba Meitei, Secretary Information and Publicity, Military Affairs, KCP (MC), an organisation banned under UAP Act.

8. According to the prosecution, investigation has also revealed that the applicant was assigned by party to do all present and future tasks of RDF and to manage Fact Finding Teams in Eastern and Central parts of India and that it was also under consideration to handover responsibility of APTs (Appointment) of foreign journalists visits to CPI (M) areas to the applicant and that the party considered him to be a more reliable and secured channel for communication and that the applicant has inculcated Maoist sympathies amongst the students in Delhi and more particularly in Dalit students.

9. The prosecution has further come with the contention that the applicant in a letter had mentioned about his expertise in setting up of APTs and development of new code structure from his end along with thorough sanitization procedures for safe travel and exchange. The applicant had also mentioned about his close association with the co-accused Sudha and IAPL and mentioned about lawyer Com. N. Singh who was groomed by co-accused Surendra and his two time visits to the struggle area.

10. The prosecution has further claimed that the documents seized from the applicant relate to Mass Mobilization and party building, analysis of cities like Mumbai, Surat from Political, Geological, Social Economical, religious profile as if done to see the potential of making inroads. Similarly certain documents were regarding mastering of secret works, instructions of Central Committee of Maoist on work in urban areas, guidelines for work in working classes, information literature related to a weapon, bomb,

mortar, letters exchanged with Maoist cadres, a guide book for using hashmale.com or riseup.net for communication by Naxals, company drill of PLGA etc and documents related to account/amount of financial transactions related to the activities of CPI (M).

11. The prosecution has further claimed that the acts committed by the applicant is in furtherance of CPI(M) activities and that said activities were committed in pursuance of the Criminal Conspiracy committed along with other accused persons collectively. There sufficient material on record to substantiate charge for the offence punishable under Sections 120-B, 115, 121, 121-A, 124-A, 153-A, 201, 505(1)(b) and 34 of the IPC and Sections 13, 16, 17, 18, 18-A, 18-B, 20, 39, 39 and 40 of the UAP Act. Therefore, it is prayed to reject the application.

12. I have heard the submissions advanced by learned advocate Mr. D.K. Gaikawad for the applicant and learned SPP Mr. Prakash Shetty.

13. On the basis of the submissions made before me following points arise before me and I have recorded findings against them for the reasons stated hereinafter;

<u>POINT</u>	<u>FINDINGS</u>
1. Whether the applicant has made out a case for grant of bail?	No
2.What order?	As per final order

REASONS

AS TO POINT No.1:

14. Considering the fact that the applicant is involved in an offence punishable under the provision of UAP Act, for deciding the bail application, the provision incorporated under Section 43-D sub section (5) of the UAPA is required to be taken into account. It reads as follows;

“43D. Modified application of certain provisions of the Code.....

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on then application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.”

15. On the point of consideration for grant of bail to the applicant involved in the offence punishable under the UAP Act, relied upon the judgment of Hon’ble Supreme Court in the case of **Thwaha Fasal Vs Union of India 2021 SCC Online 1000**. This judgment lays down the law as to what should be the approach of the Court in deciding bail applications involving offences under Chapters IV and VI of the UAP Act.

16. The Hon'ble Supreme Court, in this case has considered the question of grant of bail to the accused who was charged with various Sections, mainly under Chapters IV and VI of the UAPA and others.

17. In the said judgment Hon'ble Supreme Court has held that;

"Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the Court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the Court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the Court while examining the issue of prima facie case as required by sub-section (5) of Section 43D is not expected to hold a mini trial. The Court is not supposed to examine the merits and demerits of the evidence. If a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is."

18. Bearing in mind the observations of Hon'ble Apex Court, I am required to consider the totality of the material produced along with the charge sheet for deciding present application.

19. The learned advocate for the applicant Mr. Gaikawad has vehemently submitted that the applicant has not been named in the report and that his house was searched on 10.09.2019, but he was arrested on 28.07.2020, after he was summoned. According to him, even if the allegations made against the applicant are taken into consideration, in that case only an offence punishable under Sections 38 and 39 of the UAP Act can be said to have been made out. Therefore, he has prayed to exercise discretion in favour of the applicant and release him on bail.

20. In contrast, learned S.P.P. Mr. Shetty has submitted that there is sufficient material against the applicant and the co-accused to show that they were involved in the activities of banned organisation. He has further submitted that the applicant and the co-accused were not merely passive but active members of the banned organisation. There is sufficient material against them to show their involvement in the larger conspiracy. He has referred to certain letters seized from the computers and electronic devices of the applicant and the co-accused during search to show how they were involved in the functioning of the banned organisation and the severity of the conspiracy. Therefore, he has prayed to reject the application.

21. The learned SPP has submitted that at the time of house search of the applicant incriminating material including laptop and the mobile handset of the applicant were seized. On perusal of the panchanama dated 10.09.2019 it is found that it contained SIM Card of mobile connection number 9811971166. The learned SPP has

invited my attention to the pamphlet under the heading of THE STRUCTURE OF UAPA AND THE QUESTION OF POLITICAL PRISONERS DAY LONG CONVENTION- 12.04.2018. It ends with the name of the committee for the defence and release of GN Saibaba. In the said pamphlet contains the aforesaid mobile connection number. The same can be said to be sufficient to prima facie establish that the applicant was instrumental for the release of the convict GN Saibaba, who was convicted for the activities of the CPI (M).

22. Similarly, learned SPP Mr. Shetty has invited my attention to the letter addressed to wanted accused Prakash by the co-accused Rona, which at this stage can be said to give support to the case of the prosecution. It has been mentioned in the said letter that, "HB has been given all the responsibility to coordinate programs and protests to raise public opinion in our favour. On 20th April we will organise another program under the banner-Committee for the Defense and Release of GN Saibaba. We would leave no stone unturn in providing relief to all pol. prisoners. Com. Ashok B, Amit B, Seema and Sudhir have strongly pitched for more frequent meetings of CRPP EC."

23. It is worthy to be noted that the fact that the pamphlet as stated earlier contains the mobile connection number of the applicant being the person, who was to be contacted for such activities and the name of the applicant also appears in the aforesaid letter, give corroboration to each other and prima facie sufficient to show the involvement of the applicant in furthering activities of the CPI (M).

24. The learned SPP has further invited my attention to the letter addressed by wanted accused Prakash to the Comrades. In the said letter it was mentioned to arrange that the applicant (H.B.) was made aware of current decisions. It has been further mentioned in the letter that effective immediately, Comrade HB (the applicant) will directly handle all present and future task of RDF and that he will also manage FF teams in parts of Eastern and Central India and that we were aware of several requests of foreign journalists to visit the revolutionary area and that we are still debating whether to hand over responsibility of APTs towards HB (the applicant) and that this would mean setting up fresh channels and that more reliable and secure than before.

25. Learned SPP Mr. Shetty has also invited my attention to the letter issued by the co-accused Surendra to the wanted accused Prakash. Upon perusal of the aforesaid letter it would reveal that on 30.04.2017 an agitation was arranged at *Jantarmantar* and that for that purpose the co-accused Surendra had circulated the points which were in their favour in the case of *Saibaba*. He had requested to the wanted accused to bring together intellectuals and give instructions to the co-accused Rona and the applicant to canvass the same properly. Further, the document titled as 'Agenda' states that the name of the applicant was proposed as a member of the team which would act as a secretariat for defence committee. These documents also prima facie suggests the link of the applicant with the co-accused.

26. In addition to the aforesaid documents there is statement of Premkumar Vijayan, which also gives corroboration to the contents

of the documentary evidence. He has stated that the applicant and others were active in the Committee for Release of Political Prisoners. He has further stated that the applicant took over the charge and became convener of the Committee and that the co-accused Rona was interested that the applicant takes charge of the committee. He has further added that the co-accused Rona and the applicant were the members of CRPP and actively working in Defence Committee.

27. So also, witness K. Satyanarayana has also stated, in his statement that the applicant was in touch with the co-accused Varavara Rao and that the applicant was the part of Sai Baba Defence committee. He has further added that the applicant had attended the meetings with the co-accused Varavara Rao at Delhi for Sai Baba Defence Committee. He has further stated that the applicant was sympathizer of the Maoist.

28. In my view, if the aforesaid material is taken into consideration, in that case there would be no hesitation to prima facie conclude that the applicant was actively involved in the activities of the banned organisation. The prosecution has also claimed that the applicant and the co-accused have conspired with each other and the wanted accused to further ideology of the CPI(M) and that they had abetted the act of waging war against the Government of India, brought into hatred and excited disaffection towards the Government established by law and thereby promoted enmity between different groups on the ground of religion, caste or community and committed acts prejudicial to maintenance of harmony.

29. On this point learned SPP Mr. Shetty has invited my attention to the letter dated 18.04.2017. It was allegedly issued by 'R' i.e. co-accused Rona to Prakash. It states that "Modi led Hindu fascist regime is bulldozing its way into the lives of indigenous Adivasis. In spite of big defeats like Bihar and West Bengal, Modi has successfully established BJP Govt in more than 15 states. If this pace continues then it would mean immense trouble for the party on all fronts. Greater suppression of dissent and more brutal form of Mission 2016 (OGH). Com. Kisan and few other senior comrades have proposed concrete steps to end Modi-raj. We are thinking along the lines of another Rajiv Gandhi type incident. It sounds suicidal and there is a good chance that we might fall but we feel that the party PB/CC must deliberate over our proposal. Targeting his road shows could be an effective strategy. We collectively believe that survival of the party is supreme to all sacrifices."

30. The contents of the aforesaid letter prima facie speaks that the CPI (M) was bent upon to end the Modi-Raj i.e. the Modi led Government. Not only this, they were also thinking to go for another incident like the death of Mr. Rajiv Gandhi, by targeting the road shows of Mr. Modi. Learned SPP has submitted that every one knows about the manner in which the death of late Rajiv Gandhi had taken place. If these allegations are taken into consideration in proper perspective in that case there will be no hesitation to prima facie conclude that there is prima facie case against the applicants that they have done an act with intent to threaten or likely to threaten the unity, integrity, security and sovereignty of India and with intent to strike terror in section of the people in India by other means to likely to cause death of, or injuries to, any person or persons.

31. In the background of the aforesaid material, there is every scope to prima facie conclude that the applicant was having knowledge in respect of the conspiracy so hatched. So far as the offence of Criminal Conspiracy is concerned, the Hon'ble Supreme Court has settled that, from its very nature conspiracy is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested, quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference, must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto. In this background it would be risky to accede to the submission made by Mr. Gaikawad, the learned advocate for the applicant that the material would not take the case of the prosecution any further than to prove the offence under Section 38 and 39 of the Act.

32. Learned advocate for the applicant has further relied upon the judgment of Hon'ble Apex Court in the case of **Union of India Vs K.A. Najeeb in AIR 2021 SC 712 and Ashim @ Asim Kumar Haranath Bhattacharya Vs National Investigation Agency 2021 SCC**

Online Sc 1156 to state that Section 43-D of the Act is comparatively less stringent than Section 37 of the NDPS Act. Unlike the NDPS where the competent court needs to be satisfied that *prima facie* the accused is not guilty and that he is unlikely to commit another offence while on bail; there is no such pre-condition under the UAP Act. Instead, Section 43-D (5) of UAP Act, merely provides another possible ground for the competent court to refuse bail, in addition to the well settled considerations. It is to be noted that in the said case the Hon'ble Apex Court has observed that the presence of statutory restrictions like Section 43-D (5) of the Act, per-se does not oust the ability of Constitutional Courts to grant bail.

33. He has submitted that there are more than 50 prosecution witnesses and that the charge sheet runs in 30,000 pages and it will take long time to commence the trial. He would further claim that the maximus sentence applicable to the applicant would be 10 years and if during trial, he is put in custody, it would violate his right guaranteed under Article-21 of the Constitution of India. Therefore, he has prayed to grant bail.

34. On this point learned SPP has submitted that the prosecution is all along ready to proceed with the trial and that the matter is halted for framing the charge as the defence had approached the Hon'ble High Court and prayed for stay. In addition to this, he would submit that the accused persons on one or the other ground submit miscellaneous applications and thereby the matter is pending without framing charge. Therefore, he would claim that the prosecution cannot be held guilty for not proceeding with the matter.

35. So far as the judgment in the case of Ashim @ Asim Kumar (cited supra) is concerned it appears that it is based on the judgment in the case of K.A. Najeeb. Upon perusal of the aforesaid judgment it is found that the Hon'ble Apex Court has considered the rider to grant bail under;

Section 43-D (5) of the UAP Act and concluded that the presence of statutory restrictions like Section 43-D (5) of the UAP Act per-se does not oust the ability of **CONSTITUTIONAL COURTS** to grant bail on the ground of violation of part III of the constitution. In this view of the matter it cannot be said that this court can exercise discretion in favour of the applicant on the ground of delay in proceeding with the trial. Therefore, I conclude that the authorities relied upon by the Learned Advocate for the applicant cannot be used favourably to support the claim of the applicant and to release him on bail.

36. Upon cumulative consideration of all the aforesaid circumstances as well as law on the subject, I conclude that the applicant has failed to make out a case for grant of bail. Thus, I answered point No.1 in the negative.

AS TO POINT No.2:

37. Up shot of above discussion, leads me to conclude that the application sans merit, deserves to be rejected. Before parting, it would be just to make reference to the pursis filed by advocate for the applicant at Exh.637. By filing the pursis Exh.637 the learned advocate for the applicant had requested to pass orders on the present application expeditiously.

38. The record revealed that on 8.12.2021, learned advocate for the applicant had advanced arguments. However, since applications for bail filed by accused Nos.13 to 15 were also pending, the learned SPP had submitted that he would give common reply and therefore, present application was posted for reply arguments by the learned SPP after the arguments were advanced by learned advocates for accused Nos.13 to 15. Thereafter, the submissions made by the learned SPP were heard. On 1.2.2022, the learned SPP had completed his arguments and the submissions in reply by the learned advocate for the applicant and accused Nos.13 to 15 were heard on 3.2.2022. In fact, unless and until the submissions are completed by both the parties the court is not supposed to pass the order. Accordingly, after hearing submissions of both parties, the matter has been adjourned today for passing orders. Resultantly, I pass the following order:

ORDER

Bail Application Exh.535 in Special Case No.414 of 2020 is hereby rejected.

(Dinesh E. Kothalikar)
Special Judge, NIA
City Civil and Sessions Court,
For Greater Bombay

Date : 14.02.2022.

Dictated on : 14.02.2022.

Typed on : 14.02.2022.

Signed on : 14.02.2022.

: 17 :

“ CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

UPLOAD DATE AND TIME : 16.02.2022. AT 04.10 pm
NAME OF STENOGRAPHER : Mrs. Prajakta K. More

NAME OF THE JUDGE	HHJ SHRI.D.E.KOTHALIKAR (C.R.No.25)
Date of Pronouncement of Order	14.2.2022.
Order signed by the P.O. On	14.02.2022.
Order uploaded on	16.02.2022.