

Bail Matters 2976 of 2022

FIR No. 242/19

U/s 143/147/148/149/186/353/332/333/307/308/435/427/323/341/120B/124A/
153A/34 IPC, u/s 3/4 Prevention of Damage to Public Property Act & u/s 25/27
Arms Act

PS Crime Branch (NFC)

Sharjeel Imam vs. State

30.09.2022

Present: Sh. Amit Prasad, Ld. Special PP for the state through VC.

Sh. Talib Mustafa, Sh. Ahmad Ibrahim and Sh. Kartik Venu, Ld.

Counsels for applicant/accused.

IO/Inspector Mantoo Singh in person.

Ld. Counsel for applicant/accused has placed on record a copy of order dated 26.09.2022 passed by Hon'ble High Court in Bail Application No. 4236/2021 titled as Sharjeel Imam vs. State of NCT of Delhi, whereby the bail application pending before Hon'ble High Court has been permitted to be withdrawn without prejudice to the rights and contentions of the respective parties.

It is submitted by Ld. defence counsel that the instant application moved u/s 436A CrPC deserves to be allowed in view of the earlier observations of this court as reflected at para 10 and 11 of the order dated 22.10.2021, whereby the earlier application of applicant/accused seeking regular bail was disposed of. It is argued that this court was pleased to dismiss the earlier application of applicant/accused keeping in view the allegations u/s 124A/153A IPC, however since then, the right of bail in terms of provisions of section 436A CrPC has accrued in favour of applicant/accused. It is further argued that Hon'ble Apex Court in S.G. Vombatkare vs. Union of India, W.P. (C) No. 682/2021 vide order dated 11.05.2022 has directed that the prosecution for offence u/s 124A IPC be kept in abeyance in all pending cases and in view of the

said directions, only the offence u/s 153A IPC remains to be considered against the applicant/accused at present in view of earlier order of this court. It is urged that the case of applicant/accused is squarely covered by the statutory provisions of section 436A CrPC.

At the outset, Ld. Special PP for the state submits that without going into the merit of the allegations leveled against the applicant/accused, state is not opposing the instant application as the case of applicant/accused is squarely covered u/s 436A CrPC keeping in view the directions of Hon'ble Supreme Court in S.G. Vombatkare (Supra) and considering the observations dated 22.10.2021 of this court.

I have heard parties and perused the record.

This court, while disposing of the earlier application of applicant/accused, thereby seeking regular bail had *inter alia* observed as follows:-

10. As far as allegations against applicant/accused for offences under section 143/147/148/149/186/353/332/333/307/308/427/435/323/341/120B/ 34 IPC & 3/4 Prevention of Damage to Public Property Act & under section 25/27 Arms Act with aid of section 109 IPC are concerned, after going through the record, I am of the prima facie view that the evidence in support of the allegations (rioteers got instigated by the speech dated 13.12.2019 of applicant/accused and thereafter they indulged in the acts of rioting, mischief, attacking the police party etc), is scanty and sketchy. Neither any eye witness has been cited by prosecution nor there is any other evidence on record to suggest that co-accused got instigated and committed the alleged act of rioting etc upon hearing the speech of applicant/accused Sharjeel Imam. Further, there is no evidence corroborating the version of prosecution that alleged rioteers/co-accused were a part of the audience addressed by applicant/accused Sharjeel Imam on 13.12.2019. Upon specific inquiry by this court, Ld. Special Public Prosecutor fairly conceded that at this stage, there is no material available with prosecution to the effect that applicant/accused and other co-accused persons were members of any common social platform viz whatsapp etc so as to fasten the liability of acts of co-accused upon present applicant with aid of section 109 IPC. The essential link between the speech dated 13.12.2019 and the

subsequent acts of co-accused is conspicuously missing in the instant case.

11. The theory as propounded by investigating agency leaves gaping holes which leaves an incomplete picture unless the gaps are filled by resorting to surmises and conjectures or by essentially relying upon the disclosure statement of applicant/accused Sharjeel Imam and co-accused. In either case, it is not legally permissible to build the edifice of prosecution version upon the foundation of imagination or upon inadmissible confession before a police officer. Once the legally impermissible foundation of imaginative thinking and disclosure statement of accused/co-accused is removed, the prosecution version on this count appears to be crumbling like a house of cards. Though Ld. Special Public Prosecutor argued that said disclosure statements are relevant under section 8 of Indian Evidence Act, however the said argument appears to be nothing but a desperate attempt on his part to save the day for prosecution.”

Admittedly, the said observations have not been set-aside by any Superior Court till date. Now as far as remaining offences u/s 124A/153A IPC are concerned, as rightly pointed out by the parties, the prosecution for offence u/s 124A IPC in all pending cases has already been directed to be kept in abeyance by Hon'ble Supreme Court in S.G. Vombatkare (Supra). Now as far as offence u/s 153A IPC is concerned, it is not disputed that the alleged act of applicant/accused is punishable with maximum imprisonment upto three years as provided u/s 153A(1) IPC. The applicant/accused is in custody since last more than 31 months, having been arrested on 17.02.2020 in the instant case.

Therefore, in the facts and circumstances of the present case, considering the submissions made at Bar, in view of the directions of Hon'ble Apex Court in S.G. Vombatkare (Supra) and keeping in view the earlier order dated 22.10.2021 of this court, I am of the considered view that the case of applicant/accused is covered u/s 436A CrPC and therefore instant application deserves to be allowed.

In view thereof and without commenting upon merit of the present case, applicant/accused Sharjeel Imam is admitted to bail on

furnishing personal bond in the sum of Rs. 30,000/- with one surety of like amount subject to the condition that applicant/accused shall always remain available on a working mobile number and shall intimate the concerned IO about change of address, if any.

Application stands disposed of accordingly.

Dasti to all concerned.

In compliance of *Sanjay Singh Vs State (Govt of NCT of Delhi)*, Writ Petition (Crl.) No. 974/2022, copy of this order be sent to applicant through concerned Jail Superintendent for information.

(ANUJ AGRAWAL)
ASJ-05, South-East District
Saket Courts, New Delhi:30.09.2022