

MHCC020170022022



IN THE COURT OF SPECIAL JUDGE,
CITY CIVIL AND SESSIONS COURT, GR. BOMBAY

BAIL APPLICATION EXH.21
IN
SPECIAL CASE NO.1493 OF 2022

Mushifque Ahmad S/o Abdul Rashid
(Presently lodged at Mumbai Central Prison) ... Accused no.9

Vs.

NATIONAL INVESTIGATION AGENCY
(RC No.02/2022/NIA/MUM) ... Prosecution.

Appearances:-

Advocate Mr. M. A. Khan for applicant/accused no.9.
SPP Mr. Jaysing Desai for NIA.

**CORAM : THE SPECIAL JUDGE,
SHRI. RAJESH J. KATARIYA, (C.R.NO.25)
DATED : 10th NOVEMBER 2023.**

(DICTATED AND PRONOUNCED IN OPEN COURT)

ORAL ORDER

Heard learned advocate Mr. M. A. Khan for applicant/
accused no.9 and Learned SPP Mr. Jaysing Desai for NIA.

2. Present application is filed for grant of bail to the accused

no.9 in regard to crime registered at NIA, Mumbai vide RC No.02/2022/NIA/MUM for the offences punishable under Sections 109, 120B, 302, 153-A, 201 & 505 of the Indian Penal Code (in short "IPC") and Sections 16, 18 & 20 of the Unlawful Activities (Prevention) Act, 1967 (in short "UAPA").

3. On 26.05.2022, BJP Ex-Spokesperson made controversial comment in a TV debate which caused outrage in Amravati in Muslim community and her statement went viral on social media. On 08.06.2022, applicant/accused no.9, co-accused no.7 and others approached to Nagpuri Gate Police Station, Amravati to get FIR registered for controversial comment. The police did not register FIR at Nagpuri Gate Police Station as number of FIRs had already been registered in that regard at other Police Stations.

4. On 09.06.2022, meeting of Muslim community was called by applicant/accused no.9 and co-accused no.7 through WhatsApp group at Roshan Hall, Amravati to discuss the issue of controversial comment by the speaker. Thereafter, chain of messages in support and against that controversial comment went viral on social media. Some of the persons, who had supported the controversial comment through social media received threats from some persons.

5. As per prosecution, deceased Umesh Kolhe, who was running Veterinary Medical Shop was acquainted with co-accused no.6, who is the Veterinary Doctor. The accused no.6 used to visit deceased's shop for procuring medicines. They both were member in a WhatsApp

group, wherein many Veterinary medical representatives and Chemists fraternity were members. On 14.06.2022, deceased posted one photo of BJP Ex-spokesperson along with the text message from his mobile in support of it. Accused no.6 was the only Muslim member in the said WhatsApp group, who spotted said message in the group. It is alleged that accused no.6 after seeing the post shared by the deceased on WhatsApp made up his mind to avenge deceased. He took screenshot of the said message and intentionally circulated disclosing the mobile number of the deceased to expose him among the Muslim community over social media group. He made changes in the saved contact number of the deceased replacing second last digit, re-saved it in his mobile contact list, took a snap screenshot of WhatsApp post displaying changed contact number as of deceased and texted it by tagging screenshot of deceased's post, in other WhatsApp group and to many individuals to avenge the deceased post of support. The criminal conspiracy to eliminate the deceased began.

6. On 18.06.2022 and 19.06.2022, meetings were held between the accused persons and it was decided to behead (kill) the deceased. It is alleged that the accused persons with their common intention formed a terrorist gang under the leadership of accused no.7 to avenge the dishonour through controversial comment and kill deceased for striking terror in to the general public, who supported the controversial comment and on 20.06.2022 at about 21.30 hours in furtherance of the conspiracy accused persons went to kill the deceased however on that day, it could not be executed. It is alleged that on 21.06.2022, reiki was done near the medical shop of the deceased and on that day at about 22.20 hours when deceased was on the way to his

home after closing his shop on his scooter, accused persons wrongly restrained him and stabbed on his neck with sharp knife with an intention to behead him. The deceased was immediately taken to the hospital however, he was declared dead.

7. Information was received at City Kotwali Police Station, Amravati about murder of deceased. The FIR No.306 of 2022 dated 22.06.2022 for offence under Section 302 read with 34 of IPC was registered against 3 unknown persons. During investigation section 153-A, 153-B and 120-B of IPC and section 16, 18, 20 of UAPA, came to be added in the crime. The Central Government considering gravity of offence directed the case to be investigated by the NIA. The case was re-registered vide RC-02/2022/NIA/MUM and NIA took the investigation of the case. On 15.12.2022, sanction was accorded by the Ministry of Home Affairs, CTCR Division under Section 45 (1) of UAPA against the applicant and co-accused. Record shows on 02.08.2022, applicant came to be arrested. After completion of investigation, charge sheet came to be filed against the applicant and co-accused.

8. Learned advocate for applicant submitted that applicant is falsely implicated in the crime. He has no concern with the alleged conspiracy. The ingredients of the provisions are not satisfied. The applicant had not been engaged in preparatory work or conspiracy of the alleged crime. The applicant being the religious and social activist was in personal contact with the umpteen individuals of the locality. There is no recovery at the instance of the applicant. The applicant is the imam of the masjid and social worker due to which he is known to

all the persons in the locality of Amravati. He is ready to co-operate with investigation machinery hence prayed for grant of bail.

9. Per contra, vide say filed at Exh.21-A, learned SPP opposed application. He submitted that applicant has participation in the conspiracy of commission of crime. The applicant wanted to avenge the message circulated by the deceased. The applicant is the main conspirator and had supervised the events of crime and had taken information about the murder of deceased from co-accused. He facilitated accused nos.4 and 11 with funds of Rs.10,000/- after murder of the deceased to flee away from Amravati for evading arrest. He arranged harbouring place for accused no.7. He played vital role to help accused no.7 to escape alongwith other accused persons. Hence prayed for rejection of the application.

10. Perusal of the report under Section 173 of Cr.PC filed by the prosecution, it is specifically alleged that applicant/accused no.9 and co-accused no.7 called meeting of the Muslim community on 09.06.2022 through WhatsApp group communication at Roshan Hall, Transport Nagar, New Tipu Sultan market Amravati to discuss on the issue and to take decision about Bharat Band appeal on social media. It is alleged that in the said meeting applicant, co-accused nos.7 and 10 and their associates were insisting again to lodge FIR against the statement of the BJP ex-spokesperson. It is alleged that the applicant had participated in the meetings held at Gausiya hall on 18.06.2022. It is alleged in the charge-sheet that investigation established that apart of the conspiracy held amongst accused nos.4,5,7 and 11, accused no.7 also conspired

with applicant/accused no.9 with whom he was well acquainted and working under his guidance, applicant/accused no.9 is a Maulavi of Transport Nagar, Amravati and belonged to Tablighi jamaat and very closed to accused no.7.

11. It is further contended in the charge-sheet that during investigation it is established that applicant/accused no.9 and accused no.7 were not satisfied with the response of the police during meeting held on 09.06.2022 for registration of FIR against the controversial comment and they wanted some drastic action in Amravati and entered into conspiracy and agreed for killing Umesh Kolhe, thereby became a part of said terrorist gang. It is alleged in the charge-sheet that investigation established that post murder, on 22.06.2022, accused no.4 and 11 met with accused no.5 and asked him to arrange money for their escape from Amravati to Ajmer, Rajasthan and subsequently accused no.5 conveyed the message to accused no.7 and then applicant and accused no.7 collected cash amount of Rs.10,000/- and gave it to accused no.5 who handed over to accused nos.4 and 11 and accused no.7 also arranged Car through witness to transport accused nos.4 and 11 from Amravati and dropped them to Paratwada. It is alleged that the investigation revealed that after the brutal murder of Umesh Kolhe number of communal clashes broke out in various states of India and various FIRs were registered. It revealed that in all the FIR same ideology of some religiously radicalised persons were flourishing with the slogan '*Gustaki Nabi ki Ek hi Saja sar Tan se Juda*' which struck a terror in the mind of the people who stood for free speech and in support of BJP Ex-spokesperson. It is further alleged in the charge-sheet that investigation revealed that radicalized Islamists of the Tablighi

jamaat committed murder of Umesh Kolhe on the ground of alleged hurting of religious sentiments, promoting enmity, ill-will and hatred among different cast and religious and prejudicial to the maintenance of social harmony.

12. It is alleged in the charge-sheet that applicant/accused no.9 specially created 'Meeting Only' WhatsApp group at the backdrop of the issue. He was admin along with accused no.7. The applicant and accused no.7 appealed co-accused and others for coercive action against BJP ex-spokesperson and supporters. It is alleged that the applicant is one of the main mastermind in the case and supervised the entire events and also took information about the murder of victim from accused no.7. He provided funds of Rs.10,000/- to accused nos.4 and 11 through accused nos.7 and 5 after murder of deceased so that they can run away from Amravati and to evade arrest. It is alleged that the applicant/accused no.9 being a member of terrorist gang participated in the criminal conspiracy, terror funding, harbouring accused and destroyed mobile data related to crime.

13. The prosecution relied upon various documents filed along with charge-sheet. The FIR (page nos.12 to 15 of Volume-I, annexure B of the charge-sheet) registered for the offence under Section 302 read with 34 of IPC against unknown persons. The post-mortem report of deceased (page nos.56 to 65 of Volume-I, annexure B of charge-sheet) shows that opinion as to probable cause of death is due to stab injury sustained to left side neck. The spot panchanama (page nos.66 to 69 of Volume-I, annexure B of charge-sheet) shows that the knife cover and

the blood stain soil are seized from the spot. The knife used in the commission of crime is seized from accused no.4 under panchanama dated 28.06.2022 (page no.96 and 97 of annexure B, Volume-I of charge-sheet).

14. The prosecution relied on statement of eye witnesses (page nos.3 to 10 of Volume-I, annexure A of charge-sheet) which revealed about the incident. The prosecution relied upon statement of witnesses (page nos.192, 193, 312 to 315) which reveals about the participation of the applicant in the meeting held between accused persons, which shows that applicant had participated in the alleged conspiracy.

15. There is ample material against the applicant regarding his involvement in the alleged conspiracy of commission of crime. The offence is very serious in nature. The allegations made in the report under Section 173 of Cr.PC and the documents filed with the charge-sheet reveals prima-facie case against the applicant. The prosecution had relied upon sanction order dated 15.12.2022 accorded by the Ministry of Home Affairs, CTCR Division under Section 45 (1) of UAPA against the applicant and co-accused.

16. Considering totality of material, there is role of the applicant in the crime. There are specific allegations and material to show that the applicant had participated in the conspiracy of crime and aided the co-accused persons. In view of specific allegations against applicant and material on record, it cannot be said that the accusation against applicant are inherently improbable or wholly unbelievable. There are

reasonable grounds for believing that the accusation against the applicant are prima-facie true. The material/evidence collated by the Investigating Agency in reference to accusation against applicant prevailed over the grounds putforth on behalf of the applicant. There is bar imposed under Section 43-D of UAPA. In view of bar under Section 43D of UAPA, applicant is not entitled for grant of bail. Hence, I proceed to pass following order:-

ORDER

Bail Application Exh.21 is rejected and disposed of.

(Rajesh J. Katariya)
Special Judge
City Civil & Sessions Court,
Gr. Bombay

Date : 10.11.2023

Dictated on : 10.11.2023

Typed on : 10.11.2023

Signed on : 10.11.2023

BA Exh.21

: 10 :

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CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
10.11.2023	4.20 pm	Umesh G. Jadhav
Name of the Judge		HHJ SHRI R.J.KATARIYA (CR No.25)
Date of Pronouncement of Judgment/Order.		10.11.2023
Judgment/order signed by P.O on		10.11.2023
Judgment/order uploaded on		10.11.2023