

Court No. - 16

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 4778
of 2023

Applicant :- Abdul Mueed Hashmi

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. /Prin.
Secy. Home Lko.

Counsel for Applicant :- Harsh Vardhan Kediya, Nikhil
Pathak, Sheeran Mohiuddin Alavi

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Harsh Vardhan Kedia, the learned counsel for the applicant, Sri Jayant Singh Tomar, the learned AGA-I and perused the records.
2. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 165 of 2022, under Sections 121A, 153A of Indian Penal Code, 1860, Police Station Qaiserbagh, District Lucknow.
3. The aforesaid case has been registered on the basis of an FIR lodged on 28.09.2022 against the applicant for commission of offence under Section 121A and 153A alleging that informations were being received that some persons of PFI are conspiring to challenge the unity and integrity of the country and to make India an Islamic nation by the year 2047. Objectionable literature was being distributed with this object.
4. The police claimed to have arrested the applicant on the basis of an information received from a mukhbir on 27.09.2022 and FIR mentions that the applicant was arrested and his checking was carried out immediately. Thereafter he was taken to the STF Headquarters in a police vehicle for a thorough checking, whereupon some objectional literature was recovered from a bag being carried out by him, including literature regarding manufacturing of IED (Improvised Explosive Device).
5. In the affidavit filed in support of the application it has been stated that the applicant is innocent and he has been falsely implicated in the present case.
6. In the affidavit filed in support of the application, the applicant's involvement in two other cases has been disclosed in para 32 of the affidavit, which were related to protests against CAA/NRC and the applicant has been granted bail in both the cases. It has further been stated in the affidavit that the applicant was only a member of PFI and he was a member of SDPI, which has not been banned and members whereof have

contested assembly election in the State of Karnataka.

7. The learned counsel for the applicant has submitted that the applicant has been charged with commission of offence under Section 121A IPC, which is 'conspiracy to commit offence punishable by Section 121'. The word conspiracy presuppose agreement between two or more persons to commit an offence. In this case, the applicant alone has been made an accused and a single accused cannot commit the offence of conspiracy. He has further submitted that the offence under Section 153A IPC carries a maximum punishment of imprisonment up to three years. The investigation already stands completed and a charge sheet has been submitted on 21.12.2022.

8. Replying to the aforesaid submissions, the learned AGA-I has submitted that the scope of Section 121A IPC has been explained by the Hon'ble Supreme Court in **Mohd. Irfan v. State of Karnataka, 2022 SCC OnLine SC 856**, wherein after discussing the law laid down in **Nishar Khan, (2003) 8 SCC 461** and other cases, the Hon'ble Supreme Court has held that Section 121A IPC deals with conspiracy to commit offences punishable under Section 121 of the IPC as well as conspiracy to overawe by force, the Central Government or any State Government. Therefore, Section 121-A is not confined to conspiracy to commit offences punishable under Section 121 of the IPC alone. The word overawe has been interpreted in the following manner:-

"57. The word "overawe" clearly imports more than the creation of apprehension or alarm or even perhaps fear. It appears to me to connote the creation of a situation in which the members of the Central or the Provincial Government feel themselves compelled to choose between wielding to force or exposing themselves or members of the public to a very serious danger. It is not necessary that the danger should be a danger of assassination or of bodily injury to themselves. The danger might well be a danger to public property or to the safety of members of the general public.

58. As the text of the relevant Section shows, persons who plan to overawe the Central or the State Government by criminal force or show of criminal force would be guilty of offence of entering into conspiracy in terms of Section 121A of the IPC. The dictionary meaning of the expression "overawe" is to subdue or inhibit with a sense of awe²³. The expression "overawe" would thus imply creation of apprehension or situation of alarm and as rightly held by the Division Bench, it would not be necessary that the danger should be one of assassination or of bodily injury to the members of the machinery or apparatus of the Government but the danger might as well be to public property or to the safety of members of the general public."

9. I have considered the aforesaid facts and circumstances of the case and the submissions made by the learned counsel for the parties.

10. What prima facie appears from the material placed before

the Court at this stage is that the police claimed to have arrested the applicant at 08:30 a.m. on 27.09.2022. Some literature is said to have been recovered from the bag being carried by the applicant. The applicant was searched immediately after his arrest and the FIR does not make mention of recovery of any article. Thereafter he was taken to the STF Headquarters and it is alleged that upon a thorough checking conducted in the STF Headquarters, objectionable literature was recovered from a bag being carried by the applicant. The applicant is alleged to have committed an offence under Section 121A IPC, which is conspiracy to commit offences punishable under Section 121. Conspiracy presupposes agreement between two or more persons to commit the offence. The applicant alone has been made an accused in the present case and a single person cannot commit an offence of conspiracy. The said offence allegedly committed by the applicant namely promoting enmity between different groups on grounds of religion, race, place of birth, resident, language etc. and doing acts prejudicial to maintenance of harmony, carries a maximum punishment of imprisonment up to three years only. The applicant is languishing in jail since 27.09.2022 and the case has not even been committed to the court of sessions till date.

11. Without making any observations which may affect the merit of the case, I am of the view that the aforesaid facts are sufficient for making out a case for enlargement of the applicant on bail.

12. Accordingly, this bail application stands ***allowed***.

13. Let the applicant-***Abdul Mueed Hashmi*** be released on bail in the aforesaid case on furnishing a personal bond and two sureties each in the like amount to the satisfaction of magistrate/court concerned, subject to following conditions:-

- (i) the applicant shall not tamper with the prosecution evidence;
- (ii) the applicant shall not pressurize the prosecution witnesses;
- (iii) the applicant shall appear on each and every date fixed by the trial court.

14. It is observed that the trial court shall proceed with the trial expeditiously and conclude the same without granting unnecessary adjournments to any of the parties.

Order Date :- 11.12.2023

Pradeep/-