

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.33 OF 2024

Mustafa Mehmood Sayed
@ Munna Mustafa @ Sayed
Bademiya Mehmoodmiya Appellant

versus

The State of Maharashtra Respondent

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- Mr. Mubin Solkar a/w Tahera Qureshi, Tahir Hussain, Anas Shaikh, Mehrosh Solkar, Zahid Burud, Rabiya Bhamla, Yakub Shaikh, Hemal Shah i/b. Karim Pathan, Advocate for Appellant.
- Ms. Gauri S. Rao, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
RANJITSINHA RAJA BHONSALE, JJ.**

DATE : 29th SEPTEMBER, 2026

JUDGMENT : (PER : SARANG V. KOTWAL, J.)

1. In this Appeal the Appellant has challenged the Order dated 19/05/2023 passed by the learned Special Judge, Greater Mumbai, in Special Case No.5 of 2016. In effect, the Appellant is seeking his release on bail during the pendency of Special Case No.5 of 2016.

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2. Heard Mr. Mubin Solkar, learned counsel for the Appellant and Ms. Gauri S. Rao, learned APP for the State.

3. The Appellant was arrested on 09/10/2007 and since then he is continuously in custody.
4. The trial has commenced and as of today, only four witnesses are examined.
5. Learned APP on instructions states that the prosecution proposes to examine around 100 witnesses in this case. Therefore, it is quite obvious that the trial is not likely to get over within a reasonable time. The Appellant is already in custody for more than 19 years. In this background, we have considered the Appellant's prayer for bail.
6. The prosecution case in brief reads as follows :

On 09/05/2006 at about 04.00 pm, ACP Shri Shengal intercepted a Tata Sumo vehicle bearing registration No.MH-14-X-4380 coming from Manmad. Mr. Shengal had received prior information on the previous day that huge quantity of arms and

explosives were likely to be transported in the Marathwada area. ACP Shengal signaled to stop the vehicle, but the driver ignored the signal and proceeded towards Aurangabad road. After a prolonged chase of about 70 to 80 kilometers, the police team was successful in intercepting the vehicle near Verul within the limits of Khuldabad Taluka, District Aurangabad. Three occupants tried to escape. One of them was caught. His name was Mohammad Ameer. The search showed that there were huge arms and ammunition in the car. There were 10 AK-47 rifles, 40 magazines of AK-47 rifles, 2,000 live cartridges of AK-47 rifles, 10 magazine pouches and approximately 30 kilograms of RDX. They were found in corrugated boxes. A detailed Panchanama was prepared. One mobile phone was also recovered from the vehicle. The investigation revealed that accused No.4 Abdul Azim was the driver of the Sumo vehicle. The accused No.1 Mohd. Ameer, revealed that one Tata Indica car was also carrying similar boxes, and it was driven by accused No.3 Mujaffar Tanveer. On 12/05/2006, the Indica car was traced near Malegaon, which had five boxes containing arms, ammunition, and explosives. On 13/05/2006, more arms were

found in unclaimed condition at village Ankai, Yewala-Manmad Road. Thus, the police team recovered huge arms and ammunition. At the instance of accused No.7 Afazal Khan, more arms and ammunition were recovered. The investigation was carried out in connection with LAC No.3/2006, by ATS police station, at Mumbai. The offence was registered u/s 4 and 5 of Explosive Substances Act 1908, r/w sections 5, 6, 9-A of the Indian Explosives Act, 1884, r/w sections 3 and 25 of the Arms Act, 1959 r/w sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967, as amended in 2004. The investigation was carried out. The Appellant was arrested on 09/10/2007. Before that, his house was searched on 10/06/2006. A sword was seized from his house for which a separate CR No.II-25/2006 under the Arms Act was recorded at Bhingar Camp police station, Ahmednagar.

7. After the conclusion of the investigation, the ATS filed charge-sheet against the Appellant and others. In MCOC Special Case No.8 of 2009, the Appellant was shown as accused No.20. The charge-sheet were filed u/s 120(B), 201, of the IPC r/w

3(1)(ii), 3(2), 3(4) of MCOC Act r/w 5, 6, 9 (B) of Explosives Act r/w 10, 13, 16, 18, 23, 38, 39, 40 of Unlawful Activities (Prevention) Act, 1967. The affidavit-in-reply filed by the Investigating Officer in this Appeal mentions that the Appellant filed a written application on 07/11/2007, seeking pardon in that case. The learned Trial Judge granted pardon to the Appellant on 15/11/2007. On 08/02/2013, the Trial Court framed charges against 21 accused except the Appellant, who was shown as an Approver. On 03/10/2013, the Appellant filed an application for withdrawing his status as an Approver and for framing charges against him. That application was rejected. The trial commenced. The Appellant was examined on 02/03/2015, as Prosecution Witness No.88, but he did not support the prosecution case. Therefore, the prosecution declared him as a hostile witness. Certificate u/s 308 of Cr.PC. was issued. His trial was separated. Sanction was obtained from High Court to prosecute the Appellant.

8. The trial against the other 20 accused was completed vide the Judgment dated 02/08/2016. 12 accused were

convicted, and 8 accused were acquitted. Significantly, all the accused were acquitted from the charges of Commission of Offences under MCOC Act. In this background, the Appellant's case was separated, and he is facing the trial as mentioned earlier.

9. Learned counsel for the Appellant submitted that the Appellant is in custody for more than 19 years. The trial is not likely to get over within a reasonable period. On this ground alone he deserves to be released on bail. He submitted that there is hardly any role attributed to the Appellant. There is no reliable material against him. At the highest, the prosecution case is that the Appellant was sent to Bangladesh by his co-accused to collect money. Beyond those allegations, there is no material against him. To establish that fact, the prosecution relied on his own confession recorded u/s 18 of the MCOC Act and also on the confessions recorded u/s 18 of the MCOC Act of his co-accused. Nothing was recovered from him. There is nothing to show that he was aware that, huge arms and ammunition were being transported in those vehicles or those

were abandoned at any place. He submitted that there is no bar u/s 43(D)(5) of the UAPA in granting bail to the Appellant.

10. Learned APP opposed these submissions and relied on the affidavit-in-reply. The contents of the affidavit-in-reply refer to the investigation as above. She submitted that the Appellant's own confession shows the role played by him. There is CDR collected by the Investigating Officers, which shows that the Appellant was constantly in touch with his co-accused and therefore, he was aware of the conspiracy and thus he had taken active part in the conspiracy.

11. Learned counsel for the Appellant responded further by placing reliance on the two orders passed by two different Division Benches of this Court in Bail Applications pending in their Appeals. Those two accused were convicted in the first trial referred to hereinabove, from which the Appellant's trial was separated. Out of them, Afroz Khan Shahid Khan Pathan was the original accused No.14. He was convicted in Special MCOC Case No.16 of 2006, which was the original case from which the

Appellant's case was separated. The said accused was sentenced to suffer life imprisonment. He preferred Criminal Appeal No.439 of 2017 and preferred Criminal Interim Application No.906 of 2022 for bail. His bail application was allowed. The said accused was also in custody for a period of 17 years. Role attributed to him was similar to the Appellant herein. Similarly, another accused Sayyed Aakif Sayyed Zafaruddin, was also convicted in the same case for life imprisonment and was sentenced to suffer life imprisonment. He preferred Criminal Appeal No.1243 of 2018 and preferred Interim Application No.1564 of 2025 for bail pending Appeal. He was also granted bail. The role attributed to him was that he had gone to Nepal to meet the other accused. Learned counsel therefore submitted that considering this background the Appellant also be released on bail.

12. We have considered these submissions. There is no dispute that the main material against the Appellant is the confessional statement of the Appellant himself and those of the co-accused.

13. The confessional statement of the Appellant dated 05/11/2007 in the first part mentions his background. He was working as a driver and used to go to Mumbai, Aurangabad, etc. from Ahmednagar. Till 2006, he used to ply Rikshaw also. In January 2006, he met Maulana Ameer, who in turn introduced him to other accused, Akif, Bilal, Zabiuddin, Faiyyaz, etc. All of them used to tell him about the harassment caused to people belonging to his religion. They used to say that one Junaid was to send big consignment of arms and ammunition. It was to be used to take revenge on people from other community and their leaders. In April 2006, Ameer told him that they had to get funding from outside India. For that purpose, somebody had to go to Bangladesh. And in any case, they wanted to send somebody to get training of terrorist activities. He suggested that the Appellant should go to Bangladesh with one Jabi and one Haroon. The Appellant agreed with the proposal. In March 2006, he and Haroon (whose name was revealed as Afroz), went to Manmad from Aurangabad, and then from Manmad to Kolkata. Ameer had given him Rs.5,000/-. Haroon was given

one telephone number for contacting a person in Kolkata. The Appellant and Haroon then went to Kolkata and met that person. The Appellant was made to go to Bangladesh. They entered Bangladesh illegally. He met Junaid. He told the Appellant that Ameer and others were arrested in Aurangabad with arms and ammunition, and therefore, the money which he was to receive and which was to be given to the Appellant and others was not received and that the Appellant and others would have to wait. The Appellant and Haroon somehow left Bangladesh and came back. He came to know that police were looking for him. Therefore, the Appellant went to Hyderabad with his wife and children. This, in short, was his confessional statement.

14. The confessional statements of the other accused, Sayyed Aakif Zafiruddin and Mohd. Ameer Shakeel Shaikh were on similar lines as far as the Appellant is concerned. This is the main material against the Appellant.

15. From this material, at the highest, it can be said that Mohammed Ameer had sent him to Bangladesh to collect money,

but he could not collect the money because in the meantime, the consignment was caught by the police. Apart from that, there is no active role attributed to him through any other material in the entire charge sheet.

16. Thus, from the above facts, we are of the opinion that there is no impediment u/s 43(D)(5) of UAPA in granting bail to the Appellant. There are no reasonable grounds for believing that the accusation against the Appellant is, prima facie, true as far as the offences under UAPA are concerned.

17. These observations, of course, is made only for the purpose of deciding this Appeal, and the Trial court shall not be influenced by these observations.

18. Based on this observation and also taking into consideration the fact that, the Appellant is in custody without trial for more than 19 years, and the trial is not likely to get over within a reasonable time, the Appellant deserves to be released on bail.

19. Hence, the following order :

ORDER

- (1) The order dated 19/05/2023 passed by the Special Judge, Greater Mumbai, in Special Case No.5 of 2016, is set aside.
- (2) During pendency and final disposal of Special Case No.5 of 2016 pending before the Special Judge, Greater Mumbai, the Appellant is directed to be released on bail on his executing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one or two sureties in the like amount on the following conditions -
 - (i) The Appellant shall attend all the dates before the Trial Court.
 - (ii) He Shall not leave the State of Maharashtra without prior permission of the Trial Court.
 - (iii) The Appellant shall report to the office of the investigating agency on 1st Saturday of every month between 03.00 to 05.00 pm.

- (iv) He shall deposit his passport with the Investigating Officer, if any, before being released.
 - (v) The Appellant shall provide his contact numbers and residential address where he would be staying after his release, to the Investigating Officer, before he is actually released from prison.
 - (vi) He shall not tamper with the evidence.
- (3) With these directions, the Appeal is disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)