

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2277 OF 2016

Jafar Husaain Iqbal Hussain
Qureshi Khatri,
Age – 35 years, Occu – Labour,
R/o – Civil Line Khandwa,
Madhya Pradesh

.. Applicant

Vs.

The State of Maharashtra
Through C.I.D. Branch behind
Old High Court Building,
Aurangabad (Begum Pura Police Station)

.. Respondent

.....

Mr. Khizer Patel, Advocate for the applicant
Mr. A.S. Shinde, APP for the respondent-State

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CORAM : N.W. SAMBRE, J.

DATE : 05/07/2016

ORAL ORDER :

Heard.

2. The applicant is seeking regular bail in Crime no.I-25 of 2012 (Sessions Case No. 258 of 2013) registered at Begumpura Police Station, Dist.Aurangabad for the offences punishable under section 10 and 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter shall be

referred to as "**the Act of 1967**" for brevity).

3. The prosecution case, which has resulted into the registration of crime no. I-25 of 2012 for the offences punishable under section 307, 333, 335, 336, 338, 352, 353, 34 of the Indian Penal Code, under section 3, 4, 25, 27 of the Indian Arms Act and section 135 of the Mumbai Police Act and under section 10, 13, 15, 16 and 18 of the Unlawful Activities (Prevention) Act, 1967, is as under:-

. That upon an confidential input, the Anti Terrorist Squad, Aurangabad intercepted accused Abrar @ Munna @ Abdulla @ Ismail, who was member of Students Islamic Movement of India (SIMI) and Indian Mujahiddin, the Anti Terrorist Squad (for short "**A.T.S.**") was fired at, resulting into the Police Constable Shakil Aref Shaikh Ismail being grievously injured and the accused Azhar @ Khalil S/o Abdul Vakil Qureshi, who was accomplice of the accused Abrar came to be gunned down.

. The A.T.S. thereafter were successful in catching the accused – Abrar. During investigation, it was noticed that present applicant is involved in the unlawful activity, which is prohibited under the Act of 1967, as such, the applicant came to be arrested on 27/2/2013.

4. Learned counsel for the applicant in the above referred background would submit that the applicant is entitled to be released on bail, as the applicant is behind bar for more than 3 years. According to him, but for one or two matters, there are no criminal antecedents and the further detention of the applicant is not necessary, as he is born and brought up in Beed district where he has identity in society. He would then invite my attention to the material collected by the investigating agency against the applicant, so as to point out that there is no prima facie involvement of the applicant in the crime in question.

5. In addition to above, learned counsel for the applicant would rely upon the provisions of section 45 of the Act of 1967 i.e. taking cognizance of the offence and by relying upon Rule 4 i.e. time limit for sanction of prosecution, provided under the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 (for short "**the Sanction Rules**"), so as to submit that there is no sanction as directed and contemplated under the Act of 1967, taken by the prosecuting agency against the applicant for proceeding ahead with the prosecution under the Act of 1967 and if such sanction is there from the State Government, the same is belated which illegalise the detention of the applicant and as such he is entitled for bail.

6. Learned counsel for the applicant would invite attention of this Court to the judgment of this Court delivered at Principal Seat in the matter of **Khalid Akhtar Abdul Latif Ahemi Vs. State of**

Maharashtra reported in **2010 All M.R. (CRI) 2574**, particularly, paragraph no.5 and paragraph no.11, so as to canvass that the Court cannot take cognizance of offence against the applicant under the Act of 1967 in absence of proper sanction under the Act of 1967. Additionally, he would rely upon the judgment of the Jharkhand High Court in the matter of **Ravi Sharma @ Arjun @ Mahesh @ Ashok Vs. The State of Jharkhand and others** decided in Writ Petition (Cr.) No.91 of 2012, so as to substantiate the said contention.

7. Learned A.P.P., while relying upon the statement of the eye witnesses from the chargesheet, would submit that there is sufficient material to depict the involvement of the applicant in the crime in question. According to him, from the record, it could be inferred that the applicant is a member of banned organization (SIMI) and the said offence is punishable under section 10 of the Act of 1967. He would then submit that the offence for

conspiracy, as punishable under section 18 could be inferred from the investigation papers as against the applicant. He would then submit that the bail application of the applicant be rejected, as there is proper sanction against the applicant.

8. With the assistance of the respective counsels, I have perused the statement in the chargesheet, particularly, statements of some of the witnesses, which would be referred to i.e. Kazi Masiuddin S/o Misbahuddin recorded on 16/6/2012 and his supplementary statement recorded on 25/8/2012. Apart from above statement, there is other material evidence on record, such as the call record of the applicant with that of the main accused – Abrar, so as to infer that the applicant was in regular contact with the said accused. It is then to be noted that other incriminating material as could be gathered from the investigation papers, in my opinion, is sufficient to infer prima-facie involvement of the present applicant in the crime in

question. The cumulative effect of the analysis of investigation papers takes this Court to the conclusion that the applicant has provided logistic support to the activity of the main accused in the commission of crime in question, particularly, such activity which is banned in view of the provisions of the Act of 1967.

9. This takes me to the next submission of the learned counsel for the applicant, that the applicant is entitled to be released on bail, for want of sanction within the time stipulated as per the provisions of Rule 4 of the Sanction Rules. Rule 4 of the Sanction Rules, reads as under :-

"4. Time limit for sanction of prosecution- The Central Government or, as the case may be, the State Government shall, under sub-section (2) of section 45 of the Act, take a decision regarding sanction for prosecution within seven working days after receipt of the recommendations of the Authority."

10. Plain reading of above rule does not speak of any penal consequence, if the time prescribed in the said rules is not adhered to. If said rule is to be interpreted in the background of section 45 of the Act of 1967, which provides for taking cognizance by the Court, admittedly, in the present case, the charge against the applicant or any of the co-accused is not yet framed. Once the charge is not framed, it cannot be inferred that the Court has taken cognizance as against the present applicant in the crime in question. Appropriate support can be taken from the judgment of the Apex Court in the matter of ***Sonu Gupta Vs. Deepak Gupta and others reported in 2015 (3) SCC 424.***

11. Sections 10 and 18 of the Act of 1967 could not be sufficiently relied upon by the applicant to infer that section 45 of the Act of 1967 be made applicable in the present case, as the Court below has not yet taken cognizance of the offence. Apart

from above, as stated above, Rule 4 which prescribes time limit for the sanction, in my opinion, does not have any mandatory effect and same has to be held directory in absence of penal consequences provided therein.

12. So far as reliance placed by learned counsel for the applicant, on the judgments of **Khalid Akhtar** and **Ravi Sharma** (cited supra), in my opinion, both the judgments operate in an altogether different arena. The issue as regards the non production of sanction order contemplated under the statute, was looked into in those cases after the cognizance was taken by the Courts for the offences registered which are punishable under the Act of 1967. It was brought to the notice of the Hon'ble Courts that there was no sanction.

13. So far as accused in another case is concerned, the learned A.P.P. in my opinion, is right in pointing out that the sanction as was

applied for as against the present applicant to the State Government, was on 17/5/2013 and the sanction was received on 18/7/2013. In my opinion, the said statement needs to be accepted unless contrary is brought to the notice of this Court.

14. It is also on the instructions, learned A.P.P. submits that the said sanction order is very much part and parcel of the Sessions trial.

15. In view of above observations, in my opinion, no case for grant of bail is made out. The Application as such fails, stands rejected.

[N.W. SAMBRE]
JUDGE

arp/-