

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.335 OF 2015**

Ghattamaneni Srinivasa Rao S/o.
Murali Krishna,
Inspector of Police C/o Mutkur Police
Station, Muthukur, Nellore District,
Andhra Pradesh-524344.

...Applicant

Versus

- 1.The State C.B.I. S.Cm.B., Mumbai.
2. The State of Maharashtra.

...Respondents

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Mr. Girish Kulkarni with Mr. Maitreya Shukla and Mr. Karan
Kadam i/b. Mr. S.S. Pradhan for the Applicant.
Mr. S.K. Shinde, Additional PP with Shri Y.M. Nakhwa,
Additional PP for C.B.I.
Mr. J.H. Ramugade, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

**ORDER RESERVED ON : 17th OCTOBER, 2015.
ORDER PRONOUNCED ON: 28th MARCH, 2016.**

JUDGMENT:

By this application filed under section 397 of the Criminal Procedure Code, the Applicant, who is an accused No.23 in the Sessions Case No.312 of 2014 has challenged the order dated 11.6.2015 whereby the learned Special Judge has dismissed the discharge application at Exh.542 filed by him, interalia holding that the material on record is sufficient to give rise to grave suspicion against the Applicant.

2. Heard Mr. Kularni, the learned counsel for the Applicant. He has submitted that the prosecution has sought to implicate the Applicant herein mainly on the basis of statement of PW 87 Jaswinder Singh S/o. Gurudas Singh vis-a-vis the entry in the gate register and the statements of Gurudayalsingh PW-106. The learned counsel for the Applicant has submitted that PW-87 and PW-106 and the other passengers of the luxury bus had not identified the Applicant herein and that his identity was also not established by holding ID parade. He has further submitted that the prosecution has relied upon CDR records in respect of phone No.984828177. However, there is no material on record to indicate that the Applicant was in possession of the said phone at the relevant time. He therefore, contends that said CDR records do not give rise to a grave suspicion to connect the Applicant with the crime.

3. The learned counsel for the Applicant has further submitted that the records prima facie reveal that the Applicant was on duty at Singarayakonda Police station on 23.11.2005 till about 5.00 p.m. The said police station is at a distance of about 370 km from Hyderabad and as such the Applicant could not be the part of the escort on 23.11.2005 at about 11.00 p.m. The learned counsel for the Applicant

has submitted that the Applicant /accused cannot be ordered to face trial on mere suspicion without there being any prima facie material to show his involvement.

4. Mr. Shinde, the learned Public Prosecutor for C.B.I. has submitted that amongst other sections the Applicant is also charged for committing an offence punishable under section 120 B of the IPC. The learned P.P. has submitted that the material on record prima facie reveals that the Applicant was a sub inspector at Singarayakonda Police station in Prakashm District of Andhra Pradesh had visited the C.R.PF Center in vehicle No.AP10 J 7019 and had met other accused S.P. Rajkumar Pandian, Parmar and Dabi, police officers from State of Gujarat and Rajasthan who were involved in eliminating Sohrabuddin Sheikh and his wife Kausarbi and Tulsiram Prajapati. The learned Public Prosecutor has further submitted that the statement of Jaswinder Singh vis-a-vis the extract of gate register prima facie indicates that on 21.11.2005 the Applicant had visited CRPF center and had met the co-accused S. P. Raj Kumar Pandian, Parmar and Dabi. He has further submitted that statement of PW-106 Gurudayalsingh also prima facie reveals that officers from ATS Gujarat had intercepted a bus at Zahirabad and taken two men and a woman in their custody.

The statement of said Gurudayalsingh also prima facie reveals that one police officer from Hyderabad had accompanied them in sumo. Statement of this witness also prima facie reveals that the said person was constantly talking on the mobile phone.

5. The learned Public Prosecutor for CBI has further submitted that material and CDRs prima facie reveal that the location of mobile phone No.9848288177 was in Maharashtra and Gujarat. He has further submitted that the statements of PW-19 and PW-23 prima facie reveal that said cell phone was being used by the Applicant. Furthermore, according to the statement of PW3 Tejus Patel, a Nodal Officer of Vodafone Service Provider, the Applicant had received call from co-accused S.P. Raj Kumar, from mobile No.9825049395 and the Applicant was also constantly in touch with co-accused Dabi on mobile No.9825006898 on 25th and 26th November, 2005. He has further submitted that the duty register maintained at Singarayakonda Police station reveals that the Applicant was on leave from 23.11.2005 to 29.11.2005. The learned counsel for the CBI submitted that the aforesaid circumstances prima facie raises a grave suspicion about the involvement of the Applicant in the aforesaid crime.

6. I have perused the records and considered the submissions

advanced by the learned counsel for the respective parties. At the outset it may be mentioned that at the stage of framing of charge the Court is not required to scrutinise the material on record minutely but the Court is only required to see whether the material placed before the Court prima facie raises a grave suspicion against the accused which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. In **Sajjan Kumar Vs. CBI (2010) 9 SCC 368**, the Apex Court has reiterated the principles as under:

“On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of

the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this

stage, he is not to see whether the trial will end in conviction or acquittal.”

7. In the instant case, the case of the prosecution is that some police officers from Gujarat and Rajasthan had entered into a criminal conspiracy to nab and kill one Sohrabuddin. It is alleged that during the intervening night of 22.11.2005 and 23.11.2005 said Sohrabuddin was taken to Gujarat. In pursuance of the conspiracy some police officers from Gujarat went to Hyderabad to nab said Sohrabuddin. Said police officers from Gujarat with the aid of the present Applicant and others intercepted a luxury bus at Zahirabad and forced Sohrabuddin, his wife Kausarbi and one Tulsiram Prajapati to alight. They were taken into custody and subsequently Sohrabuddin was eliminated in a fake encounter. Kausarbi was also eliminated and subsequently about a year later Tulsiram Prajapati was also eliminated in a fake encounter at Banaskantha District. The Applicant herein is alleged to be one of the conspirators. The charge against the Applicant is mainly based on the statement of PW 87- Jaswinder Singh, who at the relevant time was posted at CRPF Group center, Hyderabad and PW 106 Driver, Anti Terrorist Squad, Ahmedabad. The statement of PW87-Jaswinder Singh reveals that in November, 2005 he was on the duty of guard commander at Gate No.3. On 21.11.2005 he and two

constables B.K. Reddy and Niranjana Kumar were on duty at Gate No.3. He has stated that entry made in the gate register discloses that the Applicant herein had visited CRPF guest house on 21.11.2005 by vehicle No. AP 10 J-7019. The said gate register also prima facie reveals that other co-accused i.e. police officers S.P. Rajkumar Pandian and Dabi from Gujarat and Rajasthan and another police constable Parmar had also visited said guest house on the same day. The details of the vehicles are also recorded in the said gate register.

8. Statement of Gurudayalsingh Chaudhari (PW 106) prima facie indicates that from August 2005 to 2006 he was working in Anti Terrorist Squad, Ahmedabad as a Driver. On 20.11.2005 he had accompanied P.I., Dabi and others to Hyderabad. They halted at CISF campus at night. He has stated that about on the third day as per the instructions of P.I., Dabi they had changed the number plate of Qualis and later on in the evening they left Hyderabad. He has narrated the manner in which they had followed one luxury bus. He has stated that one Qualis and two Sumo vehicles including the Sumo in which he and three other officers were traveling had followed the luxury bus. He has stated that thereafter Qualis vehicle in which R. Pandian was travelling had overtaken the luxury bus and stopped the bus. The Tata Sumo, in

which this witness was travelled was stopped at some distance. Sometime thereafter the Qualis in which Pandian and Dabi were traveling stopped near the Sumo vehicle. One burkha clad lady and a gunman Santram Sharma alighted from the Qualis and were made to sit in the Sumo vehicle and they had proceeded towards Bharuch. He has stated that said lady was crying throughout the journey and that the officers who had accompanied in Sumo from Hyderabad were telling the lady not to cry. His statement reveals that one of the said officers from Hyderabad had a mobile phone and that he had made 3 / 4 phone calls from the said mobile phone. His statement further reveals that said officers were speaking mostly in English and Karnataki language used in Hyderabad. He has stated that on the way to Bharuch said gunman Santram and the burkha clad lady were transferred into Qualis vehicle while he alongwith officers from Hyderabad proceeded to ATS Ahmedabad.

9. The statement of PW19 prima facie reveals that sometime in February-2005 the Applicant, who was working as Sub Inspector (SI) in Singarayakonda Police station had requested him to get a sim card in CUG plan and that he had obtained phone no.9848288177 in his customer id on the address of his transport company. He has stated

that though the application was addressed to the Executive, Credit Control of Idea Cellular, application was made on the letter head of M/s. V.N. Transport and that in the said application he had mentioned user name as Srinivas Rao G. He has stated that though he had obtained said sim card at the request of the Applicant and though the payment bills were received in his transport office, the amount was paid by the Applicant.

10. Statement of PW23 Golla Venkata Suman Babu, the dealer of Idea Cellular sim in Singarayakonda, reveals that on 8.2.2005 PW 19 had visited his shop and requested him to issue a new sim card under the CUG plan. Since PW 19 had instructed him to write the user name as Srinivas Rao G., he had obtained his personal details and filled the form as per the instructions of PW 19. He has stated that PW 19 had given a letter head wherein he has given his address proof. He has stated that he had not obtained photograph of PW19 since he already obtained Idea cellular sim in CUG plan on 8.2.2005. He has further stated that he has forwarded the said application alongwith necessary documents to the original office of Idea Cellular company. The statements of PW-19 and PW23 therefore, prima facie reveals that the cell phone no.9848288177 was obtained by the Applicant herein in

the name of PW-19.

11. The statement of PW 3 Tejus Patel, Nodal Officer of Ahmadabad reveals that the Applicant had received calls from S.P. Rajkumar (accused No.2) from his cell phone no.9825049395. The statement of this witness also prima facie reveals that PI. Dabi was in constant touch with the Applicant on 25-26.11.2005.

12. The statement of PW-20 Arun Bhahavtal, D.J.M.(Local, regulator and nodal officer) for Idea Cellular Ltd. prima facie reveals that cell phone No.9848288177 used by the Applicant herein was in roaming mode in Maharashtra and Gujarat during the relevant period.

13. The duty register maintained at Sigaraikonda police station shows that from 23.11.2005 to 29.11.2005 the Applicant was on leave. It may be mentioned that though PW-86 and PW-107 not identified the Applicant by name or in the ID parade, the material on record prima facie reveals that officers from Hyderabad had accompanied them. Statement of PW-106 reveals that one of the officers had made calls from his mobile phone. The material on record reveals that the mobile no.9848288177, which was used by the Applicant was in roaming mode in Maharashtra and Gujarat during the

relevant period. The Applicant was also on leave during the said period. All these facts coupled with the fact that the Applicant was on leave from 23.11.2005 to 29.11.2005 prima facie sufficient to raise grave suspicion that the Applicant was also involved in the said conspiracy.

14. Under the circumstances, the impugned order does not suffer from illegality or infirmity. Hence, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)