

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 29 OF 2017**

Ansar Ahmed Badshah Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Mobin Solkar i/b Mr. Ansari Mujahid Shakeel for the Applicant

Mr. Raja Thakare, Spl. P.P. a/w Mr. R. M. Pethe, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 27th SEPTEMBER, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 152 of 2008 registered with the Matunga Police Station and in connection with C.R. No. 162 of 2008 registered with the DCB CID, Mumbai (subsequently, the investigation in both the said C.Rs. was transferred to the Crime Branch, Mumbai), for the alleged offences punishable under Sections 295(A), 505(2), 507, 506 (II), 120(B), 121, 122 and 286 of the Indian Penal Code; under Sections 3, 25 of the

Arms Act; under Sections 6 and 9(B) of the Explosives Act; under Sections 13(1)(a)(b), 16, 18, 19, 20 of the Unlawful Activities (Prevention) Act; under Section 66 of the Information Technology Act and under Section 3(1)(ii), 3(2), 3(4) of the MCOC Act.

3. Learned Counsel for the applicant seeks bail on merits, on parity, as well as on the ground that the applicant is in custody for more than 8 years. He submitted that admittedly, the applicant is not alleged to have been involved in the actual process of sending the e-mail dated 23rd August, 2008 (which is the subject matter of the case), nor is he alleged to have been involved in the bomb blasts that took place in Ahmedabad and Surat. He submitted that the applicant is, in no way, connected with the alleged offence i.e. the e-mail case and has only been arrested on the basis of his alleged association with the co-accused, and as the applicant had undertaken training at Pakistan for *Jihad*. He further submitted that several co-accused in the said e-mail case have been enlarged on bail, though there was recovery of timers at the instance of some of the accused; though some of the accused were present in the meeting in which the conspiracy was hatched; and though one of the accused had gone for training to Bangalore

for *Jihad*. According to the learned Counsel for the applicant, 'Indian Mujahideen' was notified/declared as a terrorist organization only on 4th June, 2010, much after the incident and after the arrest of the applicant. He further submitted that the applicant is in custody since September, 2008 i.e. for almost 8 years and that the prospect of the trial commencing in the immediate near future is also bleak, considering that the proceedings have been stayed by the Division Bench of this Court. Learned Counsel for the applicant submits that apart from the aforesaid, the applicant has no antecedent.

4. Mr. Thakare, learned Special P.P opposed the application. He submitted that the applicant had gone to Pakistan for *Jihad* training in 2000. He further relied on the confessional statement of the applicant, to show his complicity. Learned Spl. P.P., however, does not dispute the fact, that the applicant is not concerned with the sending of the email, to the television channels/media and nor is he concerned with the bomb blast which took place in Ahmedabad and Surat. According to Mr. Thakare, the applicant had harboured Sadiq and Riyaz Bhatkal and as such, the same shows, the applicant's association with co-accused-Sadiq and Riyaz. He

further submitted that this Court was pleased to reject the application of co-accused Mohammed Zakir Abdul Haque Shaikh, as he had abetted the commission of the alleged offence and considering the embargo under Section 21(4) of the MCOC Act.

5. Perused the papers. On 26th July, 2008, a series of bomb blasts occurred in Ahmedabad, causing destruction and loss of human life. Some of the bombs were planted in motor vehicles. A few months prior to the blasts, television channels/media received an email purportedly from an organization called "*Indian Mujahideen*", warning that a series of blasts would occur. Investigation into the said case commenced. The Crime Branch also started searching for the persons, who had sent the said emails and the persons who were involved in the planting of the bombs. During investigation, 23 persons were arrested and after investigation, charge-sheet was filed against the accused. It is not in dispute that the present case only concerns the email that was sent to the television channels/media and not in respect of the bomb blasts that took place in Ahmedabad and Surat. The present case also does not concern the theft of cars, which were used by the accused for planting the bombs. The said case is registered only on the

basis of the threatening email sent by the organization “*Indian Mujahideen*”.

6. Admittedly, the applicant is not concerned with the bomb blasts that took place in Ahmedabad and Surat. Admittedly, the applicant is not the person, who was involved in the process of sending, the email (by the ‘*Indian Mujahideen*’ Organization) to the television channels/media. Admittedly, the applicant has no antecedents.

7. The allegation *qua* the applicant is that he is an associate/member of the organization-*Indian Mujahideen*. The applicant was arrested in connection with the aforesaid case on 19th September, 2008. A perusal of the confessional statement of the applicant recorded under Section 18 of the MCOC Act shows that the applicant had gone to Pakistan via Bangladesh and had participated in a training camp in Pakistan; that the applicant was taught to operate various weapons and was given firing practice; and was also taught to prepare bombs and handle them. It appears that after the said training, the applicant returned back to India. He has stated that in February, 2003, he got married in his village Pilar.

According to the applicant, Sadiq had asked him to call on 1st July, 2006, pursuant to which, he called Sadiq. He has stated that Sadiq told him that a parcel was to be brought from Hyderabad. He has stated that at that time, his wife was pregnant and as he suspected that the parcel would contain explosive materials, he went to his village. He has stated that later, Sadiq disclosed to him, that he was responsible for the bomb blasts in Mumbai trains. The applicant has further stated that in July, 2007, co-accused Sadiq had brought Riyaz Bhatkal to his house. He has stated that he knew Riyaz Bhatkal, as he was associated earlier with an organization-*SIMMI*. He has stated that they i.e. Sadiq and Riyaz stayed with him for one night and left his house on the next day. He has stated that again in August, 2007, Sadiq had brought Riyaz Bhatkal to his house; that there was some material in Riyaz's bag and that he had removed some circuit and that Sadiq and Riyaz were talking amongst themselves; that Sadiq was explaining to Riyaz about block circuit; and that the said persons disclosed to him that they had formed an organization for *Jihad* by the name '*Indian Mujahideen*'. He has further stated that after a few days, there were blasts in Hyderabad and that he felt that it was Sadiq and Riyaz, who were responsible for the same. Admittedly, the applicant has not been charge-

sheeted in the Hyderabad case. Admittedly, there is no charge of harbouring of co-accused in the present case, *qua* the applicant. It is also pertinent to note, that the said organization i.e. *Indian Mujahideen* was declared as a terrorist organization on 4th June, 2010.

8. From a perusal of the confessional statement of the applicant, it appears that during the period from 2000 (when applicant took training in Pakistan and returned to India) to 2007 (when co-accused Sadiq and Riyaz Bhatkal stayed in applicant's home), the applicant is not alleged to have been involved with any activity/offence. The incident of July/August, 2007, would *prima facie*, show, that the co-accused i.e. Sadiq and Riyaz Bhatkal had visited the applicant's house and stayed one night. It does not *prima facie* show that the applicant had participated in the preparation of the circuits/had knowledge of the co-accused's activities. Co-accused Afroz Firoz Mujawar Dastagir, Majid Shaikh @ Nazim Akhtar Shaikh and Yasir Sayyed Anis Sayyed @ Hujefa have been enlarged on bail by this Court (Coram : A. M. Thipsay, J.). Some of the applicants who were enlarged on bail, had participated in the meeting, where conspiracy was hatched; against whom there was recovery of timers and one of the accused who had

gone to Bangalore for taking training of *Jihad*. Admittedly, the said orders have not been challenged by the State and have attained finality.

9. It is also pertinent to note, that the proceedings in the said case have been stayed by the Division Bench of this Court, pursuant to an appeal filed by the State of Maharashtra, with regard to the jurisdiction of the Special Court to try the said case. The said appeal being Criminal Appeal No. 56 of 2015 is pending since 2015. The applicant is in custody since 19th September, 2008. As noted above, the applicant is neither involved in the sending of the email nor is he concerned with the bomb blasts that took place in Ahmedabad and Surat. He is prosecuted only on the basis of his association with the co-accused and as a member of the organization-*Indian Mujahideen*. It is pertinent to note, that '*Indian Mujahideen*' was declared as a terrorist organization only in 2010 and was not a terrorist organization in 2008. Whether or not, the applicant was a member of the organization '*Indian Mujahideen*', or associated with the said organization, is a matter which will be decided by the trial Court. As far as co-accused Mohammed Zakir Abdul-Haque Shaikh is concerned, his bail application was rejected by this Court (Coram : P.D. Naik, J.) vide

order dated 13th August, 2010, passed in Criminal Appeal No. 498 of 2010, considering his role in the present case. The role of Mohammed Shaikh is clearly distinguishable from the role of the present applicant.

10. Considering the material on record against the applicant, there are reasonable grounds for believing that the applicant is not guilty of the offences, with which he is charged. The applicant has been in custody for almost 8 years and the trial has not yet commenced. Charge was framed on 10th December, 2013 and not a single witness has been examined till 2015 and infact, in 2015, the proceedings were stayed by the Division Bench of this Court and there is a stay operating till this date.

11. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 50,000/- with one or more local solvent sureties in the like amount;

- (ii) The applicant shall attend the Office of the Crime Branch, Head Quarters, on the first Saturday of every month from 10:00 a.m. to 11:00 a.m, till the conclusion of the trial;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall deposit his passport, if any, with the Investigating Officer of the Crime Branch, on his release;
- (v) The applicant shall take prior permission of the trial Court, before leaving Mumbai;
- (vi) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (vii) The applicant shall attend the trial Court on every date and shall cooperate with the conduct of the trial;

(viii) The applicant shall file an undertaking in the trial Court with regard to clauses (ii) to (vii), within one week of his release;

(ix) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

12. The application is accordingly disposed of.

13. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

14. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.