

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE SIDE JURISDICTION  
CRIMINAL APPLICATION NO.349 OF 2017

State represented by  
National Investigation Agency,  
Ministry of Home Affairs,  
Central Government of India,  
BO, Mumbai, MTNL Bldg.,  
7<sup>th</sup> Floor, Peddar Road, Mumbai. .. Applicant.

Vs

Naser Bin Abubaker Yafai (Chaus)  
@ Naserbin Yafai (Chaus),  
S/o. Abubaker Bin Naser, Age 34,  
R/o. Deshmukh Galli, Gadiwan Mohalla,  
Parbhani, Maharashtra. .. Respondent

—  
Mrs.A.S. Pai, Special Counsel along with Shri Anand Sukhadeve for  
Applicant.  
Shri Pathan i/b Ishrat Ali Khan for Respondent.  
Shri P.H. Gaikwad, APP for State.  
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CORAM : DR.MANJULA CHELLUR,  
CHIEF JUSTICE

DATED : 5TH OCTOBER 2017

( IN CHAMBER )

PC:-

1. As can be seen from the papers, a First Information Report (FIR) No. 08 of 2016 was registered for trying various offences under the provisions of Indian Penal Code as well as Unlawful Activities (Prevention) Act, 1967. Initially, the case was registered by Anti

Terrorist Squad (ATS) and also the chargesheet was submitted. The matter is pending before the Sessions Court at Nanded at the instance of ATS, Kalachowki Police Station, Mumbai.

2. By virtue of the administrative order dated 8<sup>th</sup> September 2016 passed by the Ministry of Home Affairs, Government of India, the National Investigation Agency (NIA) was directed to take up the investigation of the case. Now the case is renumbered at the NIA Police Station, Mumbai as Case No.RC-03/2016/NIA/MUM. Subsequent to the said order, the chargesheet came to be filed by ATS before the Court of Chief Judicial Magistrate, Nanded. The Case No.106 of 2016 is also committed to the Court of Additional Sessions Judge-1 & Special Judge ATS, Nanded. It is not in dispute that all the case papers (investigation papers) came to be handed over by ATS to NIA.

3. Since NIA Police Station, Mumbai is investigating the matter, Criminal Application No.27 of 2017 came to be filed before the learned Single Judge of this Court under Section 407 of the Code of Criminal Procedure, 1973 seeking transfer of all the papers in Sessions Case No.106 of 2016 to the learned Special Judge, NIA at Mumbai. The said Criminal Application is still pending in this Court. We are not concerned with the merits of the said Criminal Application since the learned Single Judge is seized of the matter.

4. Meanwhile, Criminal Writ Petition No.1713 of 2016 also came to be filed at the instance of Accused No.1 in the High Court of Judicature at Bombay, Bench at Aurangabad, for challenging the jurisdiction of ATS to investigate the case along with several other contentions. Under these circumstances, since the Ministry of Home Affairs, Government of India entrusted the matter to NIA, this Application is filed by NIA seeking transfer of Criminal Writ Petition No.1713 of 2016 to the High Court of Bombay so that both Criminal Application No.27 of 2017 pending in this Court and Criminal Writ Petition No.1713 of 2016 pending at Aurangabad Bench of this Court can be heard and disposed of by one and the same Court.

5. The order dated 20<sup>th</sup> June 2017 passed by the Division Bench of Aurangabad Bench of this Court clearly indicates that both Criminal Application No.27 of 2017 and Criminal Writ Petition No.1713 of 2016 relate to same crime and the Accused involved is also one and the same. Since the issues involved in both the aforesaid matters are interlinked, it is desirable that both the matters i.e. Criminal Application No.27 of 2017 and Criminal Writ Petition No.1713 of 2016 are dealt with by one and the same Court.

6. In the present Application, this Court is not dealing with the merits of Criminal Application No.27 of 2017 and Criminal Writ Petition No.1713 of 2016. For the sake of convenience and to avoid divergent views, it would be just and proper that both the matters i.e. Criminal Application No.27 of 2017 and Criminal Writ Petition No.1713 of 2016 are heard and disposed of by one and the same Court. Admittedly, NIA Court is at Bombay. Even for jurisdiction of Aurangabad as well as Nanded, since NIA Court is situated only in the capital of Maharashtra i.e. Bombay, the case are to be dealt with at Bombay. Ultimately, if the cases are to be continued by NIA, the same will have to be dealt with at Bombay. Apparently, there is no infrastructure whatsoever for NIA Court to deal with the matter (investigation) at Aurangabad.

7. Accordingly, the Application is allowed opining that both Criminal Application No.27 of 2017 and Criminal Writ Petition No.1713 of 2016 shall be heard and disposed by a Division Bench of this Court headed by Shri Justice R.V. More.

CHIEF JUSTICE