

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

BAIL APPLICATION NO. 1920 OF 2015

Anees Shakil Ahmed Ansari

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

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Mr.M.A. Shaikh i/b. Mr.Sharif Shaikh a/w. Sajid Qureshi, Advocate
for the Applicant.

Mr.R.M. Pethe, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 20, 2017.

P.C. :

This is an application for bail in connection with C.R.No.13 of 2014, registered with Nagpada Police Station, Mumbai. The offences were registered under Sections 115, 302 read with 120-B of the IPC and Sections 43 and 66 read with 66(A) of the Information Technology Act. Subsequently, charge under Section 66F was added. On completing investigation, charge-sheet has been filed and the proceedings are presently numbered as Sessions Case No.73 of 2015. The prosecution case is that on 18th October, 2014, the investigating officer received information that one Anis Ansari, the resident of Kadar Building,

Pipe Road, Kurla Mumbai was working in Here Solution India Private Limited, Andheri and having JIHADI tendency and he is conspiring to attack children studying in American school. The said information was given to the superior officer and upon the direction of the superior, investigation was carried out. During the course of investigation, it was revealed that the applicant is the resident of Kadar Building Compound, Kurla, Mumbai and has been working in Here Solution Pvt. Ltd. as Associate Geographic Technician. It is further alleged that the applicant was using the computer of his company and Internet without prior permission and opened false account in the fake name and published objectionable information. The applicant accused downloaded the data which is incriminating, from the Internet connection of M/s.Here Solutions India Pvt. Ltd. and the applicant also supported the activities of ISIS. The applicant chat on Face-book with his counterpart Omar Elhaiji for attempting to carry out lone wolf bomb attack at American school. During the investigation, the applicant accused opened the Face-book account and took the charge of print out which suggest that the present applicant was in contact with one person and they hatched the conspiracy to kill school children. The investigating officer recorded statements of various witnesses. The present applicant was surfing Internet and

used to watch Islamic sites without permission of his employer. The prosecution case is that the applicant chat on face book with his counterparts.

2 The investigation is completed and charge-sheet has been filed. The applicant was arrested on 18th October, 2014 and since then he is in custody. The applicant had preferred an application for discharge before the trial Court which has been rejected. The case is now being posted for framing of charge on 1st August, 2017. Learned advocate for the applicant submitted that the applicant had been falsely implicated in this case. There is no evidence to substantiate the charges which are levelled against him. It is submitted that while reading the charge - sheet, Section 115 read with 302 and 120 of IPC are not made out at all. It is, however, submitted that Section 43 of the Information Technology Act, 2000 is also non bailable and even if it is applicable, it provides imprisonment for a term up to three years. It is submitted that Section 66A has been struck down by the Supreme Court. It is submitted that subsequently Section 66F of the said Act has been invoked by the investigating agency. However, there is no evidence to establish the said charge. He submitted that material collected by the investigating agency does not show any involvement of the present applicant in the

alleged conspiracy. There is no evidence to establish the fact that the applicant is having common intention or hatched conspiracy to commit offence of attack on children studying in American School or any other offence causing danger to the safety and integrity of this country.

3 It is further submitted that the applicant is in custody since the date of arrest and almost for a period of three years he is in jail. The trial has not commenced. It is submitted that the applicant is not involved in any activities, as stated above. There is no reason for him to open the fake Id. He relied upon the decision of this Court in the case of ***Yasir Sayyed Anis Sayyed Vs. State of Maharashtra***¹ in support of his prayer for bail.

4 Learned APP strongly opposed the application for bail. It is submitted that during the course of investigation, the investigating authority has concluded the evidence which supports the prosecution case. It is submitted that the statements of the employees who were working in the company of the applicant has categorically stated that the applicant used to chat on the Internet of the company. He placed reliance upon the facebook account of the present applicant and took the charge of

¹ Manu/MH/2487/2014

print out which suggest that the present applicant was in contact with one person and they hatched the conspiracy. It is submitted that the contents of the said face book chat clearly establish the fact that the applicant was involved in the said crime and hatched the conspiracy and thereby committed offence. It is submitted that the applicant had opened fake Id in fake name and published objectionable information and he was surfing Internet and used to watch Islamic Sites. It is submitted that the evidence collected by the authorities clearly establish the charge levelled against the applicant. Section 66A is clearly applicable in the present case.

5 I have perused the documents on record. It is apparent from the record that the applicant had opened the false ID and had conversation from time to time and had chat on face book with his counterpart Omar Elhaiji about attempt to carry out attack at American School. There is no reason for investigation to implicate him into this case. The statement of the witnesses recorded during the course of investigation clearly shows that the applicant had been repeatedly surfing and chatting on the Internet. The applicant used to chat on the face-book account. The material in the chat on face-book with Omar Elhaiji clearly shows that the conversation regarding his activities and intention to commit alleged activities. It is clear that the applicant had link

with the counterparts abroad. It is noted from the charge that after investigation and on receipt of documentary evidence is collected which is sufficient to show that the applicant is involved in the said activities, as alleged by the investigating authority. *Prima facie*, there is evidence that the applicant is involved in the said crime which are detrimental to the safety of the people. In this circumstances, the case for bail is not made out. The trial Court has kept the case for framing of charge on 1st August, 2017 and it is expected that the trial would be commenced and concluded expeditiously.

6 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.1920 of 2015 is rejected;
- (ii) It is clarified that the observations made in the order are only for consideration of application for bail and the trial Court should not be influenced by the same.

(PRAKASH D. NAIK, J.)