

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 523/2017**

ASIF BASHIRUDDIN SHAIKH

..... Petitioner

Through: Mr.Siddharth Aggarwal with
Mr.Aditya Wadhwa, Ms.Jahnin
Dubey, Mr.Vaibhav, Ms.Debopriyo
Moulik and Mr.Vaishakh Ranjit,
Advts.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms.Neelam Sharma, APP.
Insp.Kailash Singh Bisht, Special
Cell, Lodhi Colony.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **17.05.2017**

The petitioner, Asif Bashiruddin Shaikh has prayed for grant of bail in connection with FIR No.166/2008 dated 13.09.2008 (P.S.Karol Bagh) instituted for the offences under Sections 121/121A/122/123/302/307/323/427 and 120B of the IPC; Sections 3, 4 & 5 of the Explosive Substances Act; Sections 16, 18, 19, 20 & 23 of the Unlawful Activities Prevention Act and Section 66 of the Information and Technology Act, 2000.

The petitioner is said to be in custody since 12.03.2009.

On 13.09.2008, five bomb blasts across Delhi took place. Slightly before that, an email was sent to various electronic and print media on behalf of "Indian Mujahideen" under the heading "Message of death"

indicating that “Indian Mujahideen” will strike in five minutes from the said mail.

It has been submitted on behalf of the petitioner that he is alleged to be responsible for sending of the email only and has not been charged of being involved in any part of the conspiracy with regard to the said bomb blasts.

The petitioner is said to have been arrested by Mumbai police on 28.09.2008 in connection with some other case, where certain recoveries were made at the instance of other accused persons. The petitioner is also said to have made a disclosure statement on 04.10.2008 leading to the arrest of some accused persons and recovery of certain items, which according to the petitioner, are not related to the present case. The petitioner was thereafter arrested by Delhi Police in the present case on 16.03.2009.

After investigation, chargesheet was submitted against eight persons in the first instance and later supplementary chargesheet was submitted and the number of accused persons who have been put on trial is 14.

Learned counsel appearing for the petitioner has submitted that the petitioner was not involved in the conspiracy of actual planting of bomb but has only been alleged to be member of “Media Cell Group” of the “Indian Mujahideen” who were operating from Pune. The controversial e-mail, before the blasts was alleged to have been sent by the petitioner along with other co-accused persons. The unsecured Wi-fi connection of M/s.Kamran Power Control Ltd was hacked by one of the co-accused and, through such connection, the e-mail was sent to various media houses. The petitioner is also said to have pointed out the place from where the emails were sent out.

Learned counsel for the petitioner has submitted that there is no

evidence of linking the petitioner to the incidents of bomb blasts. There is no call-data record (CDR) or phone conversation in support of the claim of the prosecution that the petitioner conspired with other accused persons.

It is further submitted that there is no evidence whatsoever of the petitioner travelling together with other accused persons at the time when the Wi-fi server of M/s.Kamran Power Control Pvt. Ltd was hacked. Out of the five persons who were arrested on the disclosure of the petitioner from a building in Pune, only one, it has been argued has been made an accused in this case. Hence, the recovery at that place, it has been suggested, cannot be attributed to the petitioner, especially in the absence of any evidence to suggest that the applicant was either residing at that house or was frequenting it.

Out of 610 cited witnesses, till date, over a period of eight years, only 217 witnesses have been examined and that the trial is not likely to be concluded in near future. It is, therefore, argued that the delay in conclusion of trial is an important factor which should be taken into account while deciding the bail application. It has also been argued that the provisions of Section 43D(5) of UAPA, 1967 would not be applicable to the facts of this case as the same was invoked on 31.12.2008 vide Unlawful Activities (Prevention) Amendment Act, 2008 i.e. after the occurrence in the present case.

The petitioner is said to be a well educated person coming from a respectable family of Pune. It has been submitted that the petitioner was gainfully employed as a Design and Development Engineer who has been arrested in a malafide manner in the year 2008. Even the father of the petitioner has served as a Senior Engineer in the Department of Electrical

Engineering, Pune Municipal Corporation. Learned counsel for the petitioner, on the basis of the aforesaid facts, suggests that the petitioner has deep roots in society and there is little or practically no likelihood of his fleeing from the course of justice. Since the materials have already been collected, the petitioner would not be in a position to tamper with the evidence or influence witnesses in case he is released on bail, till the conclusion of the trial.

While opposing the bail, learned counsel appearing for the State submitted that the petitioner is an accused of the serial blasts case, when within a short span of time, bomb blasts occurred at five places in Delhi in which 26 persons were killed and 135 persons were injured. Several FIRs, it has been argued, were lodged under various sections of the Indian Penal Code.

It is further submitted that the Central Intelligence Agency received a secret information that one Atif @ Bashir of Delhi had visited Ahmedabad and had prepared, along with others, IED devices in a house at Ahmedabad. From there, aforesaid Atif @ Bashir came to Delhi by Rajdhani Express. On such tip off, a team of special cell/NDR raided Flat No.108 of L-18, Batla House, Delhi where a shootout occurred in which some of the police personnels were injured. One Mohd.Saif was arrested from the spot who revealed the names of Ariz @ Junaid and Shahzad @ Pappu both hailing from Azamgarh, U.P. Some of the injured accused persons were also arrested.

Mohd.Atif, referred to above, admitted that he was a member of Indian Mujahideen outfit which was headed by one Mohd.Atif Ameen @ Atif @ Bashir. From his statements it further came to light that Indian

Mujahideen was divided into three groups namely Sahabuddin Brigade for strikes in South; Mohd.Gajnavi brigade for strikes in North and Shaheed Al-Zarkavi brigade for strikes on VVIPs. There was a separate group under the name and style of “Media Group” which was responsible for sending emails before the blasts to electronic and print media. Some of the accused persons who were arrested disclosed the name of the petitioner as member of the aforesaid “Media Group”.

The petitioner is said to have been arrested in Pune on the disclosure of one Sadique Shaikh. It has been submitted by the learned counsel for the State that alongside the arrest of the petitioner, there were recovery of huge incriminating materials. The name of the petitioner has also transpired in the disclosure statement of other accused persons and that there are materials to connect the petitioner with the act of conspiracy.

It has further been submitted by the learned counsel for the State that the progress in the trial, can by no stretch of imagination be called tardy. The Trial Court sits on every working Saturday. Therefore, the delay cannot be attributed to the prosecution.

True it is that in deciding bail applications, an important factor which ought to have a bearing is the delay in conclusion of trial. Nonetheless in a case of this kind, where several persons have lost their lives, there has to be a number of witnesses who would be required to be examined in support of the prosecution. With such large number of witnesses, it is but natural that the trial would take a longer time than the trial of other cases which may not be of such big magnitude.

This Court is conscious of the fact that in the criminal justice system, the sacrosanct rights of accused persons of their liberty is to be zealously

guarded and long incarceration on the ground of the trial not being concluded is normally not justified as it is a departure from the cherished rights of personal liberty guaranteed under Article 21 of the Constitution of India. But on the other hand, the nature of the offences and the magnitude of the trial have also to be taken into account for taking any decision with regard to the grant of bail.

At this stage, it would be rather premature to analyse the materials collected against the petitioner during investigation and the evidence which might come in support of the prosecution or the probability of the defence which could be taken by the petitioner and therefore, any discussion on the merits of the case would be uncalled for. Suffice it to say that there are sufficient materials against the petitioner showing his involvement in the occurrence. The Trial Court cannot, also be faulted with any delay when sittings are being held on all Saturdays.

Taking into account the totality of the circumstances, the nature of accusation, the role played by the petitioner, this Court is not inclined to exercise its jurisdiction for granting bail to the petitioner.

Application is dismissed.

ASHUTOSH KUMAR, J

MAY 17, 2017

k