

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

% **Judgment delivered on: 17th November, 2017**

+ **CRL.REV.P. 406/2015**

KAHEEL AKHTAR

..... Petitioner/ Revisionist

Through: Mr.Mehmood Pracha, Adv. with
Mr.Prateek Gupta, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr.Panna Lal Sharma, APP for State
with ACP Govind Sharma, Insp. Satish
Rana, SI Manoj Kumar and SI Ravinder
Joshi, Special Cell/NDR, Lodhi
Colony, New Delhi.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. By way of the above captioned criminal revision petition, preferred by the revisionist under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the revisionist seeks to set aside the impugned order dated 6th May, 2015 passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi

whereby the bail application of the revisionist/accused was dismissed.

2. The brief facts stated are that on 21st November, 2011, the Delhi Police Special Cell acting on the basis of specific information received by them, arrested and detained Mohd. Quatil Siddique @ Sajjan (now deceased), a member of the banned terrorist organisation 'Indian Mujahideen' from the Anand Vihar, Bus Terminal, New Delhi. Arms, ammunition, fake Indian currency notes of Rs.1000 denomination, fake passports and fake identity cards were found in his possession. During interrogation, the said accused person disclosed that he is a member of Indian Mujahideen and had been involved in terrorist activities, i.e. German Bakery blast, Chinnaswami Stadium blast at Bangalore in 2010. He further disclosed that his associates are namely Gauhar, Imran and Gayur Ahmad Jamali. Subsequently, an FIR bearing no.54/2011 under Sections 471/489B/489C/120-B of the Indian Penal Code, Sections 3/4/5 of the Explosive Substances Act, 1908, Sections 16/18/19/20 of the Unlawful Activities (Prevention) Act, 1967, Section 12 of the Passport Act, 1967 and Section 25 of the Arms Act, 1959 was registered in Police Station Special Cell, Lodhi Colony on 22nd November, 2011.
3. During the investigation by Delhi Police Special Cell, the name of the revisionist was disclosed by the co-accused Gayur Ahmad Jamali, and consequently, the name of the revisionist was added as an accused in the present FIR. The revisionist along with another co-accused Kamal Hasan @ Bilal were arrested by Police Station

Cubbon Park, Bangalore and were handed over to Police Station Special Cell, Delhi on 5th July, 2012. On 9th July, 2012, the revisionist was produced before the court of learned Chief Metropolitan Magistrate, Tis Hazari, New Delhi and was arrested in the present case FIR No. 54/2011 registered under Sections 471/489B/489C/120-B of the Indian Penal Code, Sections 3/4/5 of the Explosive Substances Act, 1908, Sections 16/18/19/20 of the Unlawful Activities (Prevention) Act, 1967, Section 12 of the Passport Act, 1967 and Section 25 of the Arms Act, 1959.

4. A supplementary charge sheet under Section 173 Cr.P.C. was filed against the revisionist and co-accused on 20th September, 2012 before the court of learned Chief Metropolitan Magistrate, Tis Hazari Courts, New Delhi and on 7th June, 2014, the learned Additional Sessions Judge, Patiala House Courts, New Delhi charged the present revisionist under Section 20 of the Unlawful Activities (Prevention) Act, 1967.
5. Subsequently, the present revisionist filed a bail application under Section 439 Cr.P.C. in the court of learned Special Judge, Patiala House Courts, New Delhi which was dismissed vide order dated 6th May, 2015 by the learned Additional Sessions Judge.
6. Aggrieved by the said impugned order, the revisionist has preferred the present revision petition.
7. The learned counsel appearing on behalf of the revisionist has submitted that the order dated 6th May, 2015 is bad in law.

8. He has further submitted that the Court below admitted the question of law are pending determination of the Hon'ble High Court of Delhi as contention of learned counsel of revisionist/accused regarding Section 6 of the National Investigation Agency Act, 2008 and jurisdiction of this Court are pending. The Court of learned ASJ explained that his Court cannot decide the matter as the same is pending as reference in High Court of Delhi.
9. The learned counsel of the revisionist has submitted that in the present petition, there is no direct evidence qua the revisionist and the revisionist has been wrongly impleaded in the FIR No. 54/2011 only on the basis of alleged disclosure statement of his co-accused namely Gayur Ahmad Jamali. The charge sheet nowhere discloses as to how the revisionist is involved in the alleged offence.
10. The learned counsel on behalf of the revisionist has further submitted that the revisionist has nothing to do with the alleged offence. The only allegation against the revisionist is that he was a resident of Darbangha. The revisionist has pointed where he used to reside in Darbanga and his landlord had identified the photographs of other co-accused person who used to meet him. This is the entire evidence qua the revisionist. This *ipso facto* does not come in the way of revisionist's bail application.
11. He has further submitted that though the bail application of co-accused- Fasih Mahmood in Bail Application No. 1771/2015 has been rejected by this Court on 3rd February, 2016, however, the facts of that case and this case are different and is not interlinked with each other. In support of his arguments the learned counsel for the revisionist has relied upon the following judgments:

- i. ***A.R.Antulay v. R.S. Nayak & Anr., (1988) 2 SCC 602.***
- ii. ***Kartar Singh v. State of Punjab, (1994) 3 SCC 569.***
- iii. ***Ashruff v. State of Kerala, 2010 SCC OnLine Ker 4917.***
- iv. ***Sayed Mohd. Ahmed Kazmi v. State GNCTD & Ors., (2012) 12 SCC 1.***
- v. ***Sayed Mohd. Ahmed Kazmi v. Union of India & Ors. 2014 SCC OnLine Del 1344.***
- vi. ***Afroz Firoz Mujawar @ Dastagir v. State of Maharashtra, Crm. Bail Application No. 1608 of 2012 decided on 04.12.2012 by High Court of Bombay.***

12. Per Contra, the learned Additional Public Prosecutor for the State has submitted that the revisionist/accused had pointed out the places where he stayed along with his family in area of Darbhanga. The landlords namely Khalid Ahmad Madini and Smt. Mussrat identified the photographs of the other accused persons, arrested in the present case, who used to meet the revisionist/accused at his house and library.
13. The learned Additional Public Prosecutor for the State has further submitted that the bail application of the revisionist/accused under Section 439 Cr.P.C. was rejected by the Trial Court and this Revision Petition is not maintainable. Charge sheet in this case is already been filed and charge under Section 20 of the Unlawful Activities (Prevention) Act, 1967 has already been framed against the revisionist.
14. He has further submitted that Crl. M.C. No. 2180/2012 titled as “State v. Sayed Mohd. Ahmad Kazmi” is pending before this Court on

the same grounds which are mentioned in this revision petition and the same is put in the Regular List.

15. He has further submitted that Central Government has given approval under Section 6 of the National Investigation Agency Act, 2008 vide their approval letter No. 11011/13/2013-IS.IV dated 21st March, 2013.
16. The learned Additional Public Prosecutor for the State has further submitted that the impugned order is correct and requires no interference. He has further submitted that the bail of the co-accused- Fasih Mahmood in Bail Application No.1771/2015 has been rejected.
17. I have given my thoughtful consideration to the submissions made by learned counsel for both the parties and have also perused the material on record.
18. The whole dispute hinges around whether there is no evidence qua the revisionist except the disclosure statement?

The answer is:- **NO.**

19. The perusal of record shows that the charge sheet under Section 173 Cr.P.C. in FIR No.54/2011 of Police Station Special Cell under Sections 471/489B/489C/120-B of the Indian Penal Code, Sections 3/4/5 of the Explosive Substances Act, 1908, Sections 16/18/19/20 of the Unlawful Activities (Prevention) Act, 1967, Section 12 of the Passport Act, 1967 and Section 25 of the Arms Act, 1959 was filed on 19th May, 2012 qua the following accused persons i.e.:-

- i. Mohd. Qateel Siddiqi (since deceased) S/o Mohd. Zafeer,
- ii. Gauhar Aziz Khomani S/o Mohd. Luqman,
- iii. Gayur Ahmad Jamali S/o Nasrullah Jamal,
- iv. Mohd. Adil @ Ajmal @ Shoeb @ Guddin S/o Mohd. Saffeeq,
- v. Kamaal Hasan @ Kamaal @ Bilaal S/o Mohd. Hasnain,
- vi. Mohd. Irshad Khan S/o Abdul Zahid,
- vii. Mohd. Aftab Alam @ Farooq @ Sheikh Chilly S/o Shaikh Mohd.
- viii. Tariqe Anjum Ahshan S/o Mohd. Badruz Zaman,
- ix. Bashir Hassan @ Talha @ Masterji S/o Abrar Hussain,
- x. Mohd. Kafil Ahmad S/o late Mohd. Ayub Ansari,
- xi. Assadullah Rehman @ Dilkash S/o Anisur Rehman,
- xii. Abdur Rahman S/o Mafuzaur Rehman,
- xiii. Mohd. Shakeel S/o Mohd. Yusuf,
- xiv. **Kafeel Akhtar @ Kafeel S/o Abdus Salam,**
- xv. Syed Zabiuddin @ Zabi @ Abu Jundal S/o Syed Zakiuddin,
- xvi. Fasih Mehmood S/o Dr. Feroz Ahmad.

20. The charge qua all the accused persons were framed by the court of learned Additional Sessions Judge, Patiala House Courts on 7th June, 2014.

21. The contention of the learned counsel appearing on behalf of the present revisionist that except the disclosure statement of the co-accused namely Gayur Ahmad Jamali, there is no evidence qua the revisionist-Kafeel Akhtar is factually incorrect. The evidence relied upon by the prosecution would be read as a whole to analyse the merit of the case and to connect the present revisionist along with the other co-accused persons. The evidence qua present revisionist cannot be read in isolation.
22. The statement of the employer of revisionist i.e. Khalid Ahmed Madini under Section 161 Cr.P.C. was recorded on 16th July, 2012 and the same is reproduced hereunder:

“Case FIR No. 54/11 u/s 471,489-B & C, 120-B IPC, 16,18,19, 20 UA(P)Act, 3,4,5 Explosive Substances Act, 12 PP Act and 25 Arms Act PS Spl. Cell Lodhi Colony, New Delhi

Statement of Khalid Ahmed Madini S/o Ahmed Jubair Madini R/o Mohalla Rehman Khan PSH Lal Bagh, PS Leharia Sarai Distt. Darbhanga (BH) u/s 161 Cr.P.C.

*Stated that I live in the above address with my family and run Darul Kitab Vasunna Library and Al-Hira Public School in this place. Today on 16/07/2012, Mohd. Kafil Akhtar S/o Abdur Salam R/o Hill Barsemala PS Kajoli Distt. Darbhanga (BH), who has come with you under Police Custody, has worked as a librarian and teacher in my library and school from around 2007 to December 2011. **From the photographs of the persons that you have showed me, whose names are written as Quatil Siddiqui, Gayur Ahmad Jamali, Shahrukh @ Ahmed Siddibappa @ Imran, Mohd. Kafil Ahmad, Asadullah Rehman, and Dilkash used to meet Mohd. Kafil Akhtar (accused) in the library and I can***

identify them. Now in investigation, Kafil Akhtar had told that they were the members of Indian Mujahiddih and used to make plans for Jihad while sitting in the library. I have signed on the pointing out-cum-photo identification memo. I have handed over to you the photocopy of the document which showed that Mohd. Kafil Akhtar had worked in the library and school and if the court asks about the original copy, then I will provide the same. You recorded my statement. Heard it is correct.

Sd/-

Spl. Cell/NDR

Dt. 16/07/2012”

23. The statement of the landlord of the revisionist i.e. Smt. Mussrat under Section 161 Cr.P.C. was recorded on 16th July, 2012 and the same is reproduced hereunder:

“Case FIR No. 54/11 u/s 471,489-B & C, 120-B IPC, 16,18,19, 20 UA(P)Act, 3,4,5 Explosive Substances Act, 12 PP Act and 25 Arms Act PS Spl. Cell Lodhi Colony, New Delhi

Statement of Smt. Mussrat W/o Mohd. Anjar R/o Mohalla Mahesh Patti Darbhanga Bihar u/s 161 Cr.P.C.

Stated that I live with my family on the above address. My husband lives in Saudi. Today on 16/07/2012, Mohd. Kafil Akhtar who has brought you to my house has been my tenant for around one year in 2010-11. He lived along with his wife, namely, Fatima and his son, Abdullah on the ground floor. We knew very well about him that he used to teach in Al-Hira Public School. Many boys often come to meet him at his house. From the photographs of the persons that you have showed me, whose names are written as Quatil Siddiqui, Gayur, Ahmed Siddibappa @ Imran, Kafil Ahmad, Abidur Rehman, Dilkash and Tehshin @ Monu used to visit him very

often and talked till late nights. Today, while investigation, he disclosed that they were associated with Indian Mujahiddin and were Jihadis and used to make plans for that. I can identify them. You have taken my signatures on their photo identity and house demarcation. We neither give any rent receipt to anyone nor maintain any of its record. You recorded my statement. Heard it is correct.

*Sd/-
Spl. Cell/NDR
Dt. 16/07/2012”*

24. On the basis of statement recorded under Section 161 Cr.P.C., the Court below examined Sh. Khalid Ahmed Madini as PW44 on 9th March, 2017 and Smt. Mussrat Bano as PW47 on 13th April, 2017.
25. Furthermore, based on the evidence qua the present revisionist along with other evidences filed on the record, the Court below has framed charges under Sections 471/489B/489C/120-B of the Indian Penal Code, Sections 3/4/5 of the Explosive Substances Act, 1908, Sections 16/18/19/20 of the Unlawful Activities (Prevention) Act, 1967, Section 12 of the Passport Act, 1967 and Section 25 of the Arms Act, 1959 against the remaining accused persons and charged the present revisionist under Section 20 of the Unlawful Activities (Prevention) Act, 1967. So far, the sufficiency or the insufficiency of the evidence on record is concerned, the Court below found prima facie evidence qua the present revisionist and accordingly, the charge under Section 20 of the Unlawful Activities (Prevention) Act, 1967 was framed qua the revisionist on 7th June, 2014 and the same has not been challenged by the revisionist.

Therefore, the contention of the learned counsel of the revisionist saying that there is no evidence loses its significance on this ground. The judgments relied upon by the learned counsel for the revisionist is not applicable in the present facts and circumstances of the case.

26. Moreover, Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967 too comes in the way of the present revisionist which reads as under:-

[43D. Modified application of certain provisions of the Code.-

.....(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.]

27. The reliance is placed on the judgment passed in **Fasih Mahmood v. State (NCT of Delhi)**, 2016 SCC OnLine Del 1073, wherein the bail application of the co-accused has been rejected by this Court in the same case FIR No.54/2011.

28. Looking into above facts and circumstances, this Court finds no reason to interfere with the impugned bail order dated 6th May, 2015 passed by the learned Additional Sessions Judge.

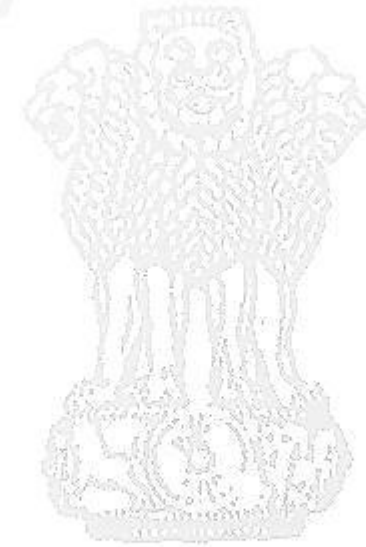
29. Consequently, the present revision petition is dismissed.

No order as to costs.

Trial Court Record be sent back forthwith along with the copy of this judgment.

I.S.MEHTA, J

NOVEMBER 17, 2017



नित्यमेव जयते