

\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 879/2017**
GAUHAR AZIZ KHOMANI

..... Petitioner

Through: Mr. Sarim Naved and Mr. Aman
Pandey, Advocates.

Versus

STATE

..... Respondent

Through: Mr. Amit Chadha, APP for State with
Insp. Satish Rana & SI Manoj Kumar,
P.S. Jama Masjid.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **28.11.2017**

CRL. M.A. 19210/2017

Allowed, subject to all just exceptions.

The application stands disposed off.

CRL.REV.P. 879/2017

1. This petition seeks quashing of order dated 01.08.2017 in FIR No. 65/2010 apropos the petitioner. It is argued that the charge of offences under sections 120-B Indian Penal Code & 18/20 Unlawful Activities (P) Act is not made out on the basis of the material on record. The charge against the petitioner reads as under:-

“18(a) Accused Gauhar Aziz Khomani being member of Indian Mujahidin conspired for a terrorist act in Delhi at Jama Masjid in 2010 Delhi Blast. The IED used in Jama Masjid attack was assembled at the house of accused Gauhar Aziz Khomani. Let the charge for the offences under

sections 120-B Indian Penal Code & 18/20 Unlawful Activities (P) Act be framed against him”.

2. The learned counsel for the petitioner submits that there is no evidence whatsoever to link the petitioner to the alleged offence. Hence, there is no basis for framing charges against him in the present case. He further submits that the only basis for linking him to the aforesaid blast is a Disclosure Statement made in custody, which is inadmissible in law. He further relies upon the judgment of Hon'ble Supreme Court in **Suresh Budharmal Kalan Alias Pappu Kalani vs. State of Maharashtra** (1998) 7 SCC 337 to contend that the aforesaid disclosure statement not being admissible in law could never be relied upon. He relies upon para 6 of the judgment which reads as under:-

“6. Thus said, we may turn our attention to the confession made by Dr. Bansal and Jayawant Suryarao. Under Section 30 of the Evidence Act a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. Since, admittedly Dr. Bansal has been discharged from the case and would not be facing trial with Kalani his confession cannot be used against Kalani. The impugned order shows that the Designated Court was fully aware of the above legal position but, surprisingly enough, it still decided to rely upon the confession on the specious ground that the prosecution was not in any way precluded from examining Dr. Bansal as a witness in the trial for establishing the facts disclosed in his confession. This again, was a perverse approach of the Designated Court while dealing with the question of framing charges. At that stage the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may, adduce in the trial, which would commence only after the

charges are framed and the accused denies the charges. The Designated Court was, therefore not at all justified in taking into consideration the confessional statement of Dr. Bansal for framing charges against Kalani.”

3. Mr. Amit Chadha, the learned Additional Public Prosecutor for the State refers to the detailed evidence and substantive material in the chargesheet, in particular upon the following material:-

“On 26.11.11, during further interrogation, accused Gauhar Aziz Khomani disclosed about the arms & ammunition manufacturing factory being run by this module of Indian Mujahiddin at Meer Vihar, Delhi. He also disclosed that after police raid at the house of Quateel Siddiqui in Delhi, he met Ahmad Siddibappa @ Imran (chief of Indian Mujahiddin in India), Kamaal @ Bilal & Irshad (both members of Indian Mujaideen) at Nizamuddin Railway Station from where Imran & Irshad absconded to Chennai. Accused Gauhar Aziz Khomani also pointed out arms & ammunition manufacturing unit being run by this module at the premises of accused Irshad Khan in Meer Vihar, Delhi.

On the same day, during Interrogation, accused Gayer Ahmad Jamal disclosed that one of the members of Indian Mujahidin namely Abdul Rehman is presently residing/studying in Chennai, Tamilnadu.

On 27/11/2011, pursuant to the disclosures of accused Gauhar and Gayur, accused Abdul Rahman (another member of Indian Mujahiddin) was arrested from near Bharat University, Sailaiyur, Chennai, Tamilnadu. During interrogation accused Abdul Rehman disclosed that he is a member of Indian Mujahiddin and he had provided shelter to Imran Asif and Irshad Khan (member of Indian Mujjahiddin) at his rented room i.e. 26, Dhanyalaxmi Street, Rajeshwar Nagar, Camp Road, Selaiyur, Chennai. On the same day i.e. on 27.11.2011, accused Irshad Khan was arrested at the instance of accused Abdul Rahman from his said rented room”.

4. The learned counsel contends that the petitioner's conspiratorial role along with other co-accused is contained in the following paragraph of the chargesheet:-

“GAUHAR AZIZ KHOMANI Accused Gauhar Aziz Khomani used mobile No. 9891635734. The said number was recovered from him and found subscribed in the name of Gauhar Aziz s/o Mohd. Luqman r/o A-42, Shaheen Bagh, Okhla, Jamia Nagar, New Delhi. Accused Gauhar Aziz Khomani was in contact with his associates (Qateel on his mobile No.7808262403, Irshad Khan on his mobile No. 9810927435, Gayer on his mobile No.. 9279519591 and Tariq on his mobile No. 9971571159) through his above number i.e. 9891635734”.

“During investigation of case FIR No. 54/11 PS Special Cell, six accused persons namely -Mohd. Quateel Siddiqui Gauhar Aziz Khomani, Gayur Ahmad Jamali, Mohd. Adil @ Azmal, Irshad Khan and Mohd. Aftab Alam @ Farukh disclosed their involvement in the terrorist strike i.e shoot out and blast incident on 19.09.2010, near Jama Masjid, Delhi registered vide case FIR No. 65/10, PS Jama Masjid and FIR No. 66/10, PS Jama Masjid. Their disclosure statements were recorded. As the provisions of Unlawful Activities (P) Act were attracted, therefore as per the orders of senior officers. I took up the investigation of case FIR No. 66/10 PS Jama Masjid and added the sections of law 120B IPC and 16/18/20 UA (P) Act and after getting sufficient grounds above six accused persons were arrested in case FIR No. 66/10, PS Jama Masjid on 21/12/11.

During sustained interrogation all these six accused persons revealed that they are members of Indian Mujahiddin and have been operating under instruction from Ahmed Siddhibappa @ Imran @ Shahrukh @ Shoi @ Asif of Bhatkal Karnataka (Chief of Indian Mujahidin in India), who further get directions from Iqbal Bhatkal, Riaz Bhatkal both r/o Bhatkal Karnatka and Amir Reza Khan of Kolkata, West Bengal, who are founder members of Indian Mujahidin; based

in Karachi, Pakistan. They further disclosed that in the year 2010 at the rented room of Quateel Siddiqui in Samastipur, Bihar Quateel Siddiqui, Gayer Ahmad Jamali, Aadil @ Ajmal, Farooq along with Kamal @ Bilal r/o Darbhanga, Bihar, Ahmed Siddibappa @ Imran, the chief operative of Indian Mujahidin in India, under instruction from their Pak based operatives viz. Riaz Bhatkal, Iqbal Bhatkal and Amir Raza Khan, conspired to attack foreign tourists in Delhi before the Commonwealth Games in order to dissuade foreign countries to participate in the games.

Further conspiracy to attack the foreign tourists, which included Gauhar Aziz Khomani and Irshad Khan was hatched at H.No. F-42, Shaheen Bagh, Delhi i.e. the residence of Gauhar Aziz Khomani. Imran procured one carbine and ammunition. In the attempt in the mid of 2010, accused Quateel was accidentally shot at by the bullet while he along with accused Adil @ Ajmal (Pak National) had gone to attack foreign tourists at German Bakery, Pahar Ganj, Delhi.

The accused persons Quateel Siddiqui, Gayer Ahmad Jamali, Aadil @ Ajmal, Farooq, Kamal @ Bilal, Ahmed Siddibappa @ Imran including two more Pakistani terrorist namely Waqas and Tabrez then again met at the Indian Mujahidin modules hide out at Saramohanpur, Darbhanga, Bihar. They conspired a terrorist attack at Jama Masjid in Delhi on the occasion of anniversary of Batla House encounter i.e. on 19.9.2010. It was decided to cause blast and simultaneously shoot at foreign tourist in Jama Masjid area. Pursuant to this conspiracy, on instructions of Ahmed Siddhibappa @ Imran, Farukh brought explosive materials from a contact of Ahmed Siddhibappa @ Imran, in Mangalore. Accordingly Ahmad Siddi Bappa, Quateel, Gayer Ahmad Jamali, Adil @ Ajmal, Kamal @ Bilal, Waqas and Tabrez conducted recce in teh Jama Masjid area. The bomb was prepared at the accommodation of accused Gauhar Aziz Khomani i.e. F-42, Shaheen Bagh, Okhla, Delhi. As per plan Qateel Siddiqui and Adil @ Ajmal went on a black Motor Cycle and fired at foreign tourist at Jama Masjid gate No. 3, in which two Taiwanese Nationals were injured, whereas

Ahmed Siddhibappa @ Imran, Waqqas and Tabrej planted the pressure cooker bomb in a stolen Maruti Car near transformer adjoining PS Jama Masjid.

5. The case is being prosecuted against ten other accused for conspiring and carrying out the bomb blast. Their roles have been detailed in the impugned order. The role of the petitioner has been discussed in the impugned order is as under:-

“7. It is made clear here that in the incidents of terrorist attack at Jama Masjid, lodged vide FIR Nos.65/10 & 66/10, involvement of same set of accused persons were revealed. Also, the accused were first arrested in case FIR No. 54/11 PS Special Cell, where during investigation they had disclosed their involvement in the incident of Jama Masjid attack. Some of the material of arms, ammunition and explosive, recovered during investigation of case FIR No. 54/11 were used in crime in this case.

11. Ld. Addl. Public Prosecutor for State further submitted that during investigation, all the accused persons were found to be members of banned terrorist outfit 'Indian Mujahedeen'. Investigation revealed that accused Ahmed Siddhibappa on the instructions of Riyaz Bhatkal, Iqbal Bhatkal and Amir Raza Khan planned a terrorist attack in Delhi before Commonwealth games, 2010, In order to dissuade foreign countries to participate in commonwealth games. For this purpose, he along with accused persons from 1- 10, hatched a conspiracy for the attack. Initially, to carry out the attack, accused Adil was sent to India illegally by Riyazj Bhatkal to assist Yasin Bhatkal in the attack. Yasin Bhatkal raised a module of Indian Mujahidin comprising of accused from Darbljanga and Samastipur area of Bihar. He set up his hide out at these places and recruited and trained the arrested cadres. Accused Adil, a trained militant also trained the other accused in making LEDs. Accused Yasin Bhatkal with the help of his father in law, Irshad Khan installed a illegal factory at Meer Vihar, Delhi to prepare arms and ammunition, which

was unearthed at the instance of accused Irshad Khan, during investigation of case FIR No. 54/11 PS Special Cell, Delhi. In the mid of the year 2010, accused Yasin Bhatkal procured arms and ammunition from Bihar and accused Quateel and Adil were sent to attack foreign tourists at German Bakery, Paharganj, Delhi, but accused Quateel was accidentally shot at by the bullet of carbine before they could execute the attack. So this attack was failed. The medical report Conducted after arrest of Quateel Siddiqui also confirmed bullet injury on his buttocks. After this failed attempt, Riyaz Bhatkal (Chief of IM) again sent one Pak national Zia-ur- Rehman @ Waqas and Assadullah Akhtar @ Haddi via Nepal to Bihar to assist Indian chief of IM, Ahmed Siddibappa. Accused from 1-10 under the leadership of Yasin Bhatkal again conspired a terrorist attack, this time at attack at Jama Masjid, on the occasion of anniversary of Batla House encounter i.e. on 19.9.2010. It was decided to cause blast and simultaneously shoot at foreign tourist in Jama Masjid area. Pursuant to this conspiracy, on instructions of Ahmed Siddhibappa @ Imran, accused Farukh brought explosive materials from a contact of Ahmed Siddhibappa @ Imran, in Mangalore. Accordingly, Ahmad Siddi Bappa, Quateel, Gayur Ahrpad Jamali, Adil @ Ajmai, Kamal @ Bilal, Zia-ur-Rehman and Assadullah Akhtar conducted recce in the Jama Masjid area. The bomb was prepared at the house of accused Gauhar Aziz Khomahi i.e F-42, Shaheen Bagh, Okhla, Delhi. As per plan, Quateel Siddiqui and Adil @ Ajmal went on a black Motor Cycle and fired at foreign tourist at Jama Masjid gate No. 3, in which two Taiwanese Nationals were injured, whereas Ahmed Siddhibappa @ Imran, Zia-ur-Rehman and Assadullah Akhtar planted the pressure cooker bomb in a stolen Maruti Car near transformer adjoining PS Jama Masjid. Investigation has revealed that before the attack at Jama Masjid, rented accommodation was arranged for Quateel. Adil, Assadullah Akhtar and Waqas at Shastri Park, Delhi. The miscellaneous items to make IED were procured by Ahmed Siddibappa at different markets in Delhi. During investigation these shops and hide outs were identified by the accused persons. During

investigation it was revealed that accused Quateel Siddiqui and Mohd. Adil @ Ajmal were the persons who had fired upon the foreign tourists on 19/09/10. Eye witnesses have identified them during investigation. During investigation of case FIR No.54/2011, one 9MM pistol was recovered on 01.12.2011 from the arms & ammunition factory situated at C-460, Mangal Bazar, Meer Vihar, Delhi and during investigation of case FIR No.66/2010 PS Jama Masjid, New Delhi, accused Mohd. Adil @ Ajmal got recovered one loaded 9 MM pistol, containing six live cartridges. CFSL report examinations confirmed that the recovered (live, pnd spent) cartridges from the spot were fired from the pistols, recovered at the instance of accused Adil and from Meer Vihar factory. Investigation has revealed that accused Ajaz Sheikh was the person who had sent email from email account al.arbi999123@gmail.com claiming the responsibility in the attack by Indian Mujahedeen.

6. What emerges from the above is that according to the prosecution, the petitioner's role is not confined to the Disclosure Statement.
7. Hence, the Court is of the view that the impugned order framing the charge against the petitioner does not limit itself to the Disclosure Statement but also considered other evidence and incriminating material which were found sufficient to form the opinion that prima facie a charge was made out against the accused/petitioner. Therefore arguments of the learned counsel for the petitioner are untenable.
8. In the circumstances, no case is made out for grant of the relief sought.
9. The petition is without merit and is dismissed.

NAJMI WAZIRI, J

NOVEMBER 28, 2017

RW