

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRA-D-657-DB of 2015 (O&M)

Date of Decision: April 5, 2018

Kamal Chauhan

.....Appellant

Vs.

National Investigation Agency

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE GURVINDER SINGH GILL.

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Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Padamkant Dwivedi, Advocate for the appellant.

Mr. Sukdeep Singh Sandhu, Special Public Prosecutor for
National Investigating Agency.

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M.M.S. BEDI, J.

This order will dispose of an appeal under Section 21 (4) of the National Investigation Agency Act against an order dated February 7, 2015 dismissing the application for bail pending trial in case FIR No. 09/2010 dated July 29, 2010 under Sections 120-B, 302, 307, 324, 326, 124-A, 438 and 440 IPC, Sections 150, 151, and 152 of Railway Act, Sections 3, 4 and 6 of Explosive Substances Act, 1908, Sections 3 and 4 of Prevention of Damage to Public Property Act, 1984 and Sections 13, 16, 18 and 23 of UA (P) Act, 1967. As per the charge-sheet submitted before the Special Court the appellant and his co-accused had entered into a criminal conspiracy and

committed terrorist act in which bomb blasts were carried out with an intention to threaten the unity, integrity and sovereignty of India and to strike a terror in the people of India and in foreign countries. The said act was committed by using Improvised Explosive Devices (I.E.Ds) including highly inflammable substances which caused blasts and consequent fire in the compartments of Train No. 4001 UP Attari (Samjhauta Express) at Panipat, Haryana on February 18, 2007. As a consequence of the bomb blasts and fire, in the said train, 68 persons died including women and children. A huge loss was caused to the public property of the Indian Railways. Besides Indian citizens and government officials, a large number of Pakistani nationals were killed. The National Investigating Agency took over the investigation under the orders of Ministry of Home Affairs, Government of India, New Delhi. As per the charge-sheet, two unexploded suitcase bombs were also found in other compartments of the same train which were later on defused/ destroyed. The initial investigation revealed that suitcase bombs planted in one compartment found at the scene of crime were stitched at Kothari Market Indore and procured by the terrorists on February 14, 2007.

So far as the appellant is concerned, he along with other co-accused were radicalized and motivated by Lokesh Sharma to avenge the attacks on Hindu temples and Indian cities by the Islamic Jehadi/ terrorist attacks on Hindu temples such as Akshardham (Gujarat), Raghunath Mandir (Jammu) and Sankat Mochan Mandir (Varanasi). The appellant along with his co-accused namely, Nabay Kumar Sarkar @ Swami Asimanand, Sunil Joshi @ Manoj (deceased) Ramchandra Kalsangra-absconder, Sandeep Danga-absconder and Lokesh Sharma propounded a theory of “bomb ka

badla bomb” and hatched a conspiracy to take revenge by doing blasts in the train. The meetings and training for execution of the plan have been detailed in the original charge-sheet submitted before the Special Court, NIA, Panchkula on June 20, 2011. On further investigation conducted under Section 173 (8) Cr.P.C., details regarding the conspiracy, meetings held at Thakurghar, Valsad (house of Bharat Bhai), details of the bomb planters, assemblers, procurement of IED material etc were collected and the details of the sequence of events leading to planting of bombs in Samjhauta Express on February 18, 2007 were revealed. On the basis of the investigation conducted in Faridabad, Delhi, Indore, Dewas, Meerut and other cities of Jharkhand, Gujarat and Uttarakhand, number of witnesses were examined and it was revealed that the trainings were organized at Bagli in District Dewas and Faridabad to the planters regarding preparation of bombs and firing of pistols. The places of assembling the IEDs were identified. The individual role of Lokesh Sharma, the present appellant, Amit Hakla and Rajender Chaudhary were determined. It was found during investigation that late Sunil Joshi resident of Dewas had master minded the execution of bomb blasts in Samjhauta Express training with the assistance of other accused. The appellant was arrested in the case on February 12, 2012 on the basis of the further investigation, being a close associate of Lokesh Sharma, who had been charge-sheeted in Samjhauta Express blast case as well as Ajmer blast case. He along with Rajinder Chaudhary and Dhan Singh, absconded from Depalpur after arrest of Lokesh Sharma in May 2010. It was also found during the course of investigation that he had planted suitcase bombs in Samjhauta Express train on February 18, 2007 along with other planters i.e.

Lokesh Sharma, Rajender Chaudhary and Amit Hakla. Appellant was trained at Bagli Forest in Dewas District Madhya Pradesh in January 2006. He attended a training Camp at Bagli Forest organized by late Sunil Joshi which was attended by Ramchandra Kalsangra, Lokesh Sharma, Amit Hakla, Rajender Chaudhary and others. Training was imparted about the preparation of pipe bombs and firing of pistols. After training the participants decided to attack Muslim dominated places and religious sites in order to retaliate attacks on Hindu temples and Indian cities by Jehadi terrorist groups. The appellant along with other co-accused had also participated in firing practice organized by Sunil Joshi at Karni Singh Firing Range at Faridabad in April 2006. The call data record of mobile numbers of Lokesh Sharma established connection of the appellant with him. The appellant along with Rajender Chaudhary held a meeting at Jama Masjid and old Delhi Railway Station in November/ December 2006 under the instructions of Lokesh Sharma and reached Delhi by Indore Intercity Express on fake names and returned on the same day after completing the assigned task. The appellant along with others had given feed back to Lokesh Sharma that there was adequate security arrangement at Jama Masjid while there was no security available at Old Delhi Railway Station, therefore exploding bombs in Samjhauta Express train could be easier and safer than planting bomb at Jama Masjid.

The bail application filed by the appellant before the Special Judge under NIA Act, Panchkula has been dismissed in view of the gravity of the offences. Parity was claimed with the case of Nabhay Kumar who has been granted the concession of bail by High Court on August 28, 2014.

Learned senior counsel for the appellant Mr. R.S. Rai, assisted by Mr. Padamkant Dwivedi besides seeking parity with co-accused Nabhay Kumar has submitted that the appellant has been in custody for the last about 6 years and that there is no legally admissible evidence available on the record prima facie establishing the culpability of the appellant.

We have considered the case of the Nabhay Kumar who has been granted the concession of bail by the High Court while deciding the appeal, mainly on the ground that he was an old man of about 80 years of age, taking into consideration his constitutional right of liberty.

With the assistance of counsel for the appellant as well as counsel for NIA, we have taken into consideration the disclosure memo of appellant regarding practice of fire arms at Karni Singh shooting range and having stayed in dormitory of Old Delhi Railway Station, discovery/ pointing memo of dormitory and platform No.1, Railway Station, Delhi, as well as Karni Singh shooting range, disclosure memo dated February 27, 2012 regarding assembling of bomb in Manvata Nagar Indore and training of fire arm and throwing hand grenade at Bagli near Dewas; discovery/ pointing memo / sketch by appellant dated February 27, 2012 at Bagli Hills; the register relating to entry at Karni Singh Shooting Range; statement of Charan Singh, JE, PW1, under Section 161 Cr.P.C. regarding the registry of shooting range, statement of Deep Chand Bhatia under Section 161 Cr.P.C. who was declared hostile; statements of Arpit Jaiswal, Camera person for NDTV and Ashwani Kaushal PW192 Deep Bhatia and Shiva Dhakad have turned hostile on September 18, 2015 and July 3, 2015. The appellant had

made disclosure statement in presence of Vishal Garg, Charan Dass and Anil Kumar on February 21, 2012 to the following effect:-

“In January 2006 I along with Amit Hakla, Shivam Dhakad, Rajender Chaudhary, Lokesh Sharma, Sunil Joshi (since dead), Ramjikalsangra and other 04 unknown persons attended a training in Bagli forest near Dewas (MP) on preparation and blasting of bomb, pistol/ gun firing, lob of grenade like objects. During the Bagli training we all discussed the attacks of Jehadi terrorist on Hindu temples and also to take avenge against Muslims by blasting bombs”.

He further disclosed that “in April 2006 I along with Sunil Joshi (since dead), Lokesh Sharma, Shivam Dhakad and Rajender Chaudhary came to Faridabad and stayed at local RSS office. Next date we all along with a local person went to a nearby big shooting range. We practice pistol/ gun shooting till afternoon. I can recognize and show the place/ range if taken there.”

Kamal Chauhan further disclosed that “during January 2007, I along with Rajender Chaudhary r/o Depalpur on the instruction of Lokesh Sharma came to Delhi and reached Jama Masjid and Old Delhi Railway Station to see the security arrangements so that bomb blasts could be done with maximum casualties and

without being detected. I can recognize and show the places if taken there.

Kamal Chauhan further disclosed that “during mid February 2007, I along with Lokesh Sharma, Rajender Chaudhary and Amit Hakla collected four suitcase bombs from Ramji Kalsangra at Indore and came to Nizamuddin Railway Station Delhi by train. We all further went to Old Delhi Railway Station by local train in group of two i.e. myself with Lokesh Sharma in one group and Rajender Chaudhary and Amit Hakla in other group. I along with Lokesh Sharma stayed at dormitory just above the main platform at old Delhi Railway Station. I can recognize and show the places/ dormitory if taken there. Further in the evening I along with Lokesh Sharma went to the platform where Samjhautha Express train was parked and placed both the suitcases in the train. As per the plan the other group consisting of Rajender Chaudhary and Amit Hakla also placed their suitcase bombs in other compartment of the same train. After placing above suitcase bomb we quietly moved to other platform and boarded a train to Jaipur. I can recognize and show the places/ platform if taken there.”

The legality of the above said statement recorded during the course of investigation has been questioned by counsel for the appellant stating that the said statement is absolutely inadmissible in view of the

provisions of Section 25 of the Evidence Act. He has also submitted that long incarceration for a period of six years is violative of the basic rules of fair trial as such it was submitted that appeal should be allowed and order of the Special Judge be set aside and appellant be granted concession of bail during the pendency of the appeal.

As mentioned hereinabove, we have carefully gone through the evidence collected by the prosecution agency as well as the disclosure memos referred to by counsel for the parties, as mentioned hereinabove. We feel concerned about the delay which has been caused in conclusion of the trial and are of the opinion that the circumstances warrant that in the exercise of supervisory powers of the High Court direction needs to be given to the Special Court to conclude the trial expeditiously taking into consideration the provisions of Section 309 Cr.P.C. but in exercise of powers of Appellate Court it will be debatable that such a direction could be ordered under Section 21 (4) of the National Investigation Agency Act. However, an advice is given to the trial Court to ensure that the trial is concluded expeditiously. So far as the evidence, admissibility and strength of the prosecution evidence produced till date, collected and produced before the Court against the appellant is concerned, we are of the opinion that the admissibility and relevance of the evidence produced would certainly be a debatable issue but expression of any opinion at this penultimate stage in above said context would certainly prejudice the rights of the investigating agency or the appellant as such we refrain ourselves from making any comments while deciding the present appeal, as statements of certain material witnesses connected with the disclosures are yet to be recorded.

It is not out of place to observe here that out of 299 witnesses, more than 260 witnesses stand already examined by the month of September 2017. Expecting that the trial will be concluded expeditiously, we do not find any ground to allow the appeal and release the appellant on bail by entering into the niceties of the trial at this stage.

The appeal is dismissed at this stage.

(M.M.S. BEDI)
JUDGE

April 5, 2018
sanjay

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.