

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1016 OF 2021

The National Investigation Agency	 Appellant
Versus	
Naresh Ramniklal Gaur @ Gor	
son of Ramniklal Gaur and another	 Respondents

....

Mr. Anil C. Singh, Additional Solicitor General a/w. Sandesh Patil, Aditya Thakkar, Sundeep Sadavarte, Chintan Shah, Prithviraj Gole, for the Appellant-NIA.

Mr. Shirish Gupte, Senior Advocate a/w. Aniket Nikam, Ashraf Diamondwala, Ashraf Diamondwala i/b. Diamondwala Co. for Respondent No.1.

Mr. K.V. Saste, APP, for Respondent No.2-State.

....

**CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.**

DATE : 21 DECEMBER 2021

JUDGMENT : (Per Sarang V. Kotwal, J.)

1. This Appeal is preferred by the Appellant the National Investigation Agency (for short, 'NIA') against the order dated 20th November 2021 passed by the Special Judge below Exhibit-37(BA) in NIA Special Case No.1090/2021. Vide that order, the Respondent No.1, who was the original accused No.2, was directed to be released on bail in C.R. No.35/2021 registered with Gamdevi Police Station, Mumbai

and re-registered as Crime No. RC-01/2021/NIA/Mumbai with NIA for the offences punishable under Sections 120B, 201, 286, 302, 364, 384, 386, 403, 419, 465, 471, 473 and 506 of the Indian Penal Code, under Sections 3 and 25 of the Arms Act, under Section 4 of the Explosive Substances Act, 1908 and under Sections 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 (for short, 'UAPA'), with certain conditions. The Appellant-NIA has challenged that order in this appeal.

2. Heard Shri Anil Singh, learned Additional Solicitor General for the Appellant, Shri Shirish Gupte, learned Senior Counsel for Respondent No.1 and Shri K.V. Saste, learned APP for Respondent No.2-State.

3. The brief facts mentioned in the charge-sheet and as presented by learned ASG, are as follows:

- i. On 25th February 2021, twenty Gelatine sticks and a note threatening a prominent industrialist and his wife were recovered by the Officers of Gamdevi police station from a Mahindra Scorpio vehicle parked on Carmichael Road. On the same day, C.R. No.35/2021 under various Sections of IPC and the Explosive Substances Act was registered at Gamdevi police

station against unknown accused. The FIR was transferred to Crime Intelligence Unit (CIU) Crime Branch, Mumbai. It was re-registered vide C.R. No.40/2021 and the case was assigned to one Sachin Waze, the then API CIU, Crime Branch, Mumbai. Incidentally, said Sachin Waze is now accused No.1 in the present crime. When the Scorpio vehicle was found, it was having a forged number-plate. The initial investigation revealed that the actual number of that vehicle was MH-02-AY-2815. In respect of theft of that vehicle, separate C.R. No.47/2021 was already registered at Vikhroli police station, Mumbai on 18th February 2021. The investigation into that offence registered at Vikhroli police station was also transferred to CIU Crime Branch, Mumbai. It was re-registered as C.R. No.41/2021 and this investigation was also assigned to Sachin Waze. C.R. No.47/2021 of Vikhroli police station originally was lodged by one Mansukh Hiran, who in this case is the deceased, and his murder is also the subject matter of the present case.

- ii. Mansukh Hiran was summoned by CIU Crime Branch on 1st March 2021 and 2nd March 2021. He attended the CIU office on 2nd March 2021 and 3rd March 2021.

- iii. On 4th March 2021, Mansukh Hiran left his house to meet one police officer, named, Tawde. He did not return home throughout the night and on the next day a Missing Person's Complaint was filed at Naupada police station, Thane by Mansukh's son Meet Hiran, which was registered vide Missing Person's Report No.16/2021. The enquiry was conducted by Naupada police station.
- iv. On 5th March 2021, Mansukh Hiran's dead body was found in the creek area of Retibunder. Therefore, an Accidental Death Report No.39/2021 under Section 174 of Cr.PC. was registered at Mumbra police station. The officers of Mumbra police station took up further investigation in that matter. During the course of investigation by Mumbra police station, Mansukh's widow Vimla Hiran alleged foul-play and expressed her suspicion against Sachin Waze.
- v. On 6th March 2021, the Government of Maharashtra transferred the cases relating to placing of explosives in Scorpio, theft of Scorpio and death of Mansukh Hiran to ATS Maharashtra for further investigation. On 7th March 2021, ATS Maharashtra converted ADR No.39/2021 of Mumbra police station into an

offence of murder by re-registering the case as FIR No.12/2021 under Section 302, 201, 34, 120-B of IPC for commission of murder of Mansukh Hiran by unknown persons. The other two cases of planting explosives and theft of Scorpio vehicle were also re-registered as C.R. Nos.10/2021 and 11/2021 and were investigated by ATS Maharashtra. On 8th March 2021, 20th March 2021 and 21st May 2021 as per the directions of the Ministry of Home Affairs, Government of India, NIA took over the investigation in these offences.

- vi. After completion of investigation, the charge-sheet is now filed against ten accused. Respondent No.1 is shown as accused No.2 and the charges applied against him in the charge-sheet are Sections 403 and 120-B of IPC. In the charge-sheet, reference was made to the conspiracy hatched right from the beginning, which was revealed during their investigation.
- vii. The investigation showed that accused No.1 Sachin Waze is the mastermind behind these offences. He had some history in his career. In the past he was arrested in connection with some serious offences. In the year 2020 he was reinstated in the police service and was posted at CIU Crime Branch as in-charge

of that Unit. He wanted to regain his clout as the ace detective/encounter specialist. According to the charge-sheet, he conspired with others to place the Scorpio vehicle laden with Gelatine sticks and the note; near the residence of that industrialist. The object was to put the family of the industrialist into fear of death and to commit terrorist act. To execute his design, Sachin Waze wanted a vehicle. He obtained that vehicle from Mansukh Hiran, who had taken that vehicle from the earlier owner in lieu of some dues. However, handing over of the vehicle was not a simple matter. For that purpose, Sachin Waze had asked Mansukh Hiran to park it on a service road near Airoli Junction on Eastern Express Highway and to hand over the key to Sachin Waze near C.P. Office in South Mumbai.

- viii. Accordingly on 17th February 2021, Mansukh Hiran drove that vehicle and parked it at the pre-decided place. He travelled to South Mumbai in a taxi and handed over the keys to accused No.1 Waze. As directed by Sachin Waze, Mansukh Hiran and his employee went to Vikhroli police station and lodged FIR vide C.R. No.47/2021 under Section 379 of IPC regarding theft of that Scorpio vehicle. Sachin Waze arranged for changing the number-

plate of the vehicle and parked it on Carmichael road, as mentioned earlier, on 25th February 2021. He had kept the Gelatine sticks and the threatening note in the car. Sachin Waze wanted Mansukh Hiran to take blame for parking that vehicle. He had promised to look after Mansukh Hiran's interest and to arrange for getting him released on bail. He was advising Mansukh Hiran not to disclose these facts to ATS authorities.

- ix. On 4th March 2021, Mansukh Hiran had received a WhatsApp call from a number linked with a SIM card that was procured in benami by accused No.2 i.e. Respondent No.1 herein. It is case of the Appellant that Respondent No.1-accused No.2 procured fourteen benami SIM cards from a shop at Ahmadabad. Out of them, he activated five SIM cards and handed them over to accused No.3 Vinayak Shinde for onward delivery to Sachin Waze. One of the SIM cards was used for making that WhatsApp call to Mansukh Hiran.
- x. However Mansukh Hiran was not willing to cooperate with Sachin Waze any further and, therefore, Sachin Waze conspired with other accused including accused No.10 Pradeep Sharma to eliminate Mansukh Hiran. Accused No.10 Pradeep Sharma, in

turn, contacted accused No.6 Santosh Shelar and the plan to commit murder of Mansukh Hiran was executed on 4th March 2021 in the night. Accused No.5 Sunil Mane called Mansukh Hiran near Suraj Water Park, Ghodbunder Road, Thane. Mansukh Hiran in the meantime was assured that he would be taken to a safe place. Believing this assurance by Sachin Waze, Mansukh went to the spot. Accused No.5 Sunil Mane met Mansukh Hiran at the spot. He asked Mansukh to hand over his mobile phone and to sit in a red coloured Tavera vehicle parked nearby. Mansukh believing all this, sat in that Tavera car. Sunil Mane took away his mobile phone and travelled in a different car. When Mansukh Hiran sat in the Tavera vehicle, he was taken a little further and he was murdered by accused No.6 Santosh Shelar, accused No.7 Anand Jadhav and accused No.8 Satish Mothkuri. They smothered Mansukh Hiran to death and threw his dead body in the creek.

This is the prosecution case.

4. The Applicant was arrested on 21st March 2021. Since then he is in custody. He was in police custody till 7th April 2021. The charge-sheet was filed on 3rd September 2021.

5. Respondent No.1 preferred Bail Application as mentioned earlier before the Special Judge, which was allowed. This is the subject matter of the present Appeal. Learned Judge recorded his main reasoning in paragraphs No.14, 16 and 17 of his order. The thrust of his reasoning was that Respondent No.1 was unaware that the SIM cards were being used for an offence involving placing the explosive laden vehicle near the house of the industrialist and for committing murder of Mansukh Hiran. Respondent No.1 had carried out this act as per the directions of his owner. He was charged only with the offences under Section 403 read with 120-B of IPC as per the charge-sheet. Learned Judge went on to observe that *prima facie* it could not be gathered that he was having active knowledge of the conspiracy. It was also observed that considering the role of Respondent No.1 and also considering the fact that the investigation is over, there was no propriety to keep him in custody. Respondent No.1 did not have criminal antecedents. The apprehension of the prosecution regarding possibility of Respondent No.1 absconding and tampering with the prosecution witnesses can be taken care of by imposing stringent conditions. With these observations, the bail application was allowed with certain conditions.

Submissions on behalf of the Appellant-NIA :

6. Learned ASG made his submissions by placing relevant material collected during the investigation before the Court. He submitted that the reasoning of learned Judge was not proper. He submitted that the very fact that the SIM cards were illegally procured by the Respondent No.1 shows that he was part of the conspiracy to commit murder. One of those SIM cards was actually used in making a phone call to Mansukh Hiran. Respondent No.1 was very well aware that the SIM card was to be used for illegal purposes and, therefore, he cannot take up a defence that he was not aware of the conspiracy. Procuring such SIM cards was an important link in the entire chain and, therefore, it cannot be said that he was not involved in the conspiracy.

7. Learned ASG submitted that Respondent No.1 knew the exact conversation between his owner and accused No.1 Sachin Waze. Therefore, he was aware that the SIM cards were to be procured for accused No.1 Sachin Waze.

8. Learned ASG submitted that everyone who is involved in the conspiracy is equally liable and the punishment provided under Section 120-B of IPC is the same for all the conspirators. This being a

serious offence, the punishment for commission of serious offences, including Section 302 of IPC, is attracted against Respondent No.1. All these factors were not properly considered by learned Special Judge when bail was granted to him and, therefore, the order is required to be set aside.

Submissions on behalf of Respondent No.1:

9. Learned Senior Counsel Shri Gupte opposed this appeal and supported the impugned order passed by learned Special Judge. He submitted that there are different parameters for consideration of grant of bail and that of cancellation of bail. If the impugned order is based on a possible view then it should not be set aside. There is no apprehension expressed by the NIA that Respondent No.1 would abscond or would tamper with the evidence if released on bail. In any case, there is no material to support such apprehension. There is nothing to show that there was meeting of minds between Respondent No.1 and any of the accused at any stage. He is not a party to the offence of planting explosives or commission of murder of Mansukh Hiran. There is no calls exchanged between Respondent No.1 and any of the other accused. Similarly there is nothing in the entire investigation to show that Respondent No.1 had personally met any of the other accused

except Vinayak Shinde who had collected the SIM cards. There is nothing to show that either of these plans was brought to his knowledge. The alleged recovery of nine SIM cards at his instance is completely innocuous as they were not used in commission of any of the offences.

10. Shri Gupte also submitted that there is important difference between the statements of KW-14 recorded by ATS and recorded by NIA, but, from both these statements it is clear that the purpose for procuring those SIM cards was not told to Respondent No.1. Even as per the prosecution case after handing over the SIM cards to the accused Vinayak Shinde, there was no further contact between Respondent No.1 and Vinayak Shinde. The statement of KW-14 shows that the SIM cards were obtained by instilling fear in the mind of that witness. The Respondent No.1 was his employee. The statement of KW-14 recorded by ATS does not show that Respondent No.1 had volunteered to procure SIM cards.

11. Shri Gupte submitted that the statement of witness KW-15 shows that he was the person who actually procured SIM cards which were sent to Respondent No.1 as per the prosecution case. Therefore even KW-14 and KW-15 can be termed as accomplices and, therefore,

their statements would require corroboration.

12. Shri Gupte submitted that Respondent No.1 is charged only under Sections 403 and 120-B of IPC. The statement of one more witness, which is at page-198 of the Appeal memo, shows that this witness has given handsets to Sachin Waze. He is not made an accused. Respondent No.1's role is much lesser than the role of this witness and, therefore, it shows that Respondent No.1 is unnecessarily roped in as an accused in this case.

13. Shri Gupte relied on some judgments in support of his contentions. He relied on the order passed by a Single Bench of the High Court of Delhi in the case of *Faizan Khan Vs. State NCT of Delhi*¹. In that case the Applicant before the Court had procured SIM card illegally which was ultimately used in mobilizing people at the protest sites, which led to riots in Delhi. Learned Judge had observed in paragraph-26 of the order that it was duty of the investigating agency to demonstrate that the Applicant had "actual knowledge" that the SIM card would be used for organizing the protests. It was imperative for the investigation agency to demonstrate that the Applicant in that case was party to any such conspiracy to organize protests. With these

¹ Decided on 23.10.2020 in B.A. No.2725/2020 (Delhi High Court)

observations the Applicant before the Delhi High Court was granted bail. That order was challenged before the Hon'ble Supreme Court and the SLP was dismissed. Shri Gupte, therefore, submitted that the same principles apply to the fact situation of the present case and Respondent No.1 should also get benefit of the same consideration.

14. Shri Gupte, in that context, also relied on similar observation of a Division Bench of this Court in the case of *The State of Maharashtra Vs. Paulson Joseph Palitra*². By that order, the Division Bench had dismissed the appeal challenging the bail granted to the accused/respondent in that case. While dismissing the appeal, the Division Bench had observed in paragraph-10 thus:

“10. This allegation is rather absurd. Even if it is assumed for the sake of argument that the accused Umed Ur Rehman used the global roaming SIM card in his mobile telephone instrument, and contacted Chhota Rajan by using the said mobile telephone, it would be difficult to accept that the conspiracy to commit murder to Arif was hatched 'by using the said SIM card'. The use of any particular SIM card in the telephone would only be incidental, and the conspiracy to commit murder would have nothing to do with which SIM card has been used in the mobile telephone

2 Decided on 15.3.2013 in Cri. Appeal No.932/2012 (Bombay High Court)

instrument used for speaking to the co-accused for hatching the conspiracy. Such far fetched connection of the alleged offences with the SIM card in question and consequently with the applicant, does not seem to be reasonable.”

Shri Gupte relied on these observations to contend that procuring SIM card will not by itself show that Respondent No.1 was aware of the conspiracy.

15. Shri Gupte submitted that the parameters for consideration of bail are different from parameters of cancellation of bail. In support of this submission, he relied on the observations of the Hon’ble Supreme Court in the case of *X Vs. State of Telangana and another*³. The relevant paragraphs-14 and 15 of that judgment are as follows:

“14. In a consistent line of precedent this Court has emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in Dolat Ram v. State of Haryana, (1995) 1 SCC 349 observed that:

“4. Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming

3 (2018) 16 SCC 511

circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of the bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

- 15.** *These principles have been reiterated by another two-Judge Bench decision in C.B.I. v. Subramani Gopalakrishnan, (2011) 5 SCC 296 and more recently in Dataram Singh v. State of U.P., (2018) 3 SCC 22 :*

“23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of

justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.”

16. Shri Gupte also relied on the judgment of the Hon'ble Supreme Court in the case of *State (Delhi Administration) Vs. Sanjay Gandhi*⁴ to advance similar argument regarding cancellation of bail. In paragraph-13 of that judgment it was observed that rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow

4 (1978) 2 SCC 411

the accused to retain his freedom during the trial.

17. Shri Gupte further relied on the judgment of the Hon'ble Supreme Court in the case of *State through Superintendent of Police, CBI/SIT Vs. Nalini and others*⁵, and in particular the observations made in Paragraph-583 of the said judgment which discusses broad principles governing the law of conspiracy. It was observed that the question for consideration in a case was whether all the accused had the intention and had they agreed that the crime be committed. One who commits an overt act with knowledge of the conspiracy is guilty.

Therefore, according to Shri Gupte the knowledge is an essential ingredient to prove the charge of conspiracy against an accused.

Rebuttal by learned ASG :

18. Learned ASG submitted that there is distinction between an application for cancellation of bail and an appeal. In the present case, this is not an application for cancellation of bail, but, this is an appeal and, therefore, the parameters are different. The Appellate Court has to see if the impugned order is perverse, illegal or unjustified. If the

5 (1999) 5 SCC 253

impugned order suffers from these infirmities and also because of wrong consideration of evidence, then the Appellate Court would be required to set aside the impugned order granting bail.

19. Learned ASG then made his submissions in respect of the judgments cited by Shri Gupte. As far as the judgment of the Hon'ble Supreme Court in the case of *X Vs. State of Telangana* (supra) is concerned, he submitted that in paragraph-15 itself the Hon'ble Supreme Court had referred to the earlier judgment of *Dataram Singh Vs. State of U.P.*, (2018) 3 SCC 22. In paragraph-23 of that judgment it was mentioned that there was difference between yardsticks for cancellation of bail and appeal against the order granting bail.

20. Learned ASG then referred to the compilation submitted by Shri Gupte which contains a judgment of the Hon'ble Supreme Court in the case of *State of Kerala Vs. P. Sugathan and others*⁶. In paragraph-14 of that judgment, the observations from another judgment were reproduced which mentions that in some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. The prosecution does not have to establish that a particular unlawful use was intended, so long as the goods or service in

6 (2000) 8 SCC 203

question could not be put to any lawful use.

Learned ASG, therefore, submitted that in the present case the procurement of SIM cards was obviously for illegal purpose and, therefore, the knowledge that it would be used for unlawful purpose can be attributed to Respondent No.1 even at this stage.

21. Learned ASG then made submissions in respect of the observations of the Hon'ble Supreme Court in the case of *Nalini* (supra). Apart from the principles relied upon by Shri Gupte, learned ASG referred to other principles in paragraph-583 of that judgment. The 3rd principle mentions that the conspiracy and its objects are required to be inferred from the circumstances and the conduct of the accused. The 4th principle mentions that the persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role. The 5th principle mentions that when two or more persons agree to commit a crime of conspiracy, then, regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common

purpose, a crime is committed by each and every one who joins in the agreement. The 6th principle mentions that it is not necessary that all the conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective and all are equally responsible.

Thus, learned ASG submitted that these principles squarely apply to the case of the present Respondent No.1 as he has played a major role in the entire conspiracy in procuring the SIM cards.

22. Learned ASG further submitted that in the case of *Faizan Khan* (supra), the accused therein was merely a salesman in a shop from where the SIM cards were issued. Therefore, his case is different from Respondent No.1's case. Similarly according to learned ASG, the case of *Paulson Joseph Palitra* (supra) is different on facts.

Reasons :

23. We have considered these submissions. As far as Respondent No.1 is concerned, the main statement against him is that of KW-14 recorded by ATS on 22nd March 2021 and his further statement recorded on 2nd April 2021 by the NIA, Mumbai. He was

owner of a Club. Respondent No.1 and others were working as helpers in his club. In January, 2021 Sachin Waze, as head of CIU, was conducting surprise raids on various clubs in Mumbai. To protect his club from such raid, this witness wanted to meet Sachin Waze. In that connection one Vinayak Shinde met him on 15th January 2021. He informed this witness that he was a suspended police officer and that he was knowing Sachin Waze. He claimed that he had excellent relations with Sachin Waze. He promised this witness to arrange a meeting with Sachin Waze. On 1st February 2021, Respondent No.1 had gone away in connection with his son's naming ceremony. On 10th February 2021 this witness met Sachin Waze in the office of CIU. Some discussion took place and after some negotiations he agreed to pay Rs.5.5 Lakhs per month as protection money. In the statement recorded before ATS, this witness has stated that Sachin Waze had told him that his senior officers needed five dummy SIM cards for confidential work.

In the statement before NIA also he has mentioned that Sachin Waze had asked him to arrange five SIM cards without documents. This witness expressed his inability but he was threatened by Sachin Waze that unless the SIM cards were arranged, he could not

run his club business. Therefore, out of fear he agreed to get five SIM cards but he asked for some time. After this meeting, when he reached his club he had a discussion with Respondent No.1. At that time Respondent No.1 told him that he would arrange SIM cards through his earlier known references. Respondent No.1 was a native of Bhuj, Gujarat. He was working with this witness since past two years. On the very day, when this witness discussed about the SIM cards with Respondent No.1, he (Respondent No.1) went back to his home town at Bhuj. Vinayak Shinde called this witness on 11th, 14th and 17th February 2021 and asked about those dummy SIM cards. After a few days, Respondent No.1 returned to Mumbai with fourteen SIM cards. On 21st February 2021, Vinayak Shinde came to this witness's office at the club. At that time, Respondent No.1 handed over five SIM cards to Vinayak Shinde in his presence. Before handing over, Respondent No.1 had activated five SIM cards. After taking those SIM cards, Vinayak Shinde left the office.

24. The ATS has recorded the statement of KW-15 who had helped Respondent No.1 in getting those SIM cards. This witness has stated that he had obtained five SIM cards and had sent them to Bhuj through a courier for which he had received Rs. Five Thousand about

five months prior to March 2021. In the first week of February, Respondent No.1 had called him and had asked for fifteen SIM cards. Accordingly this witness, he had given his documents to a store in Ahmedabad from where he had received fifteen pre-paid SIM cards. He forwarded those SIM cards to Respondent No.1's house at Bhuj. This witness was paid Rs.Fifteen Thousand for those SIM cards. On 16th February 2021, Respondent No.1 had told this witness that he had activated six SIM cards out of those fifteen SIM cards.

25. The charge-sheet also contains a recovery panchnama carried out on 21st March 2021 at the instance of Respondent No.1. Under that panchanama, he had produced eight SIM cards and a chit mentioning fourteen numbers. The chit contained the SIM card number '9979268639', which number, according to the prosecution case; was used by accused Mane to make a WhatsApp phone call to the deceased Mansukh Hiran. This is the important material against the present Respondent No.1.

26. The question for consideration therefore would be whether the Special Judge had committed any error in passing the order of bail in favour of Respondent No.1 and as to whether that order suffers from any infirmity displaying perversity, illegality or non-application of

mind. Though this is an appeal, it still in effect is asking for cancellation of the bail granted to an accused. In addition, the parameters for deciding the appeal can also be considered to test the correctness and other factors concerning the impugned order, as mentioned earlier.

27. In the present case what is most important to consider as far as Respondent No.1 is concerned; is the nature of evidence against him in the context of the entire prosecution case. In this connection certain chronological events are necessary to be taken into consideration. According to the statement of KW-14 the employer of Respondent No.1, recorded by ATS; on 10th February 2021, KW-14 met Sachin Waze and at that time besides discussing the protection money, Sachin Waze asked this witness to get five dummy SIM cards. It was specifically told to KW-14 that those SIM cards were necessary for some confidential work and for senior officers. After three to four days, Vinayak Shinde met this witness and asked about the SIM cards. At that point, this witness KW-14 called Respondent No.1 who had already gone to Bhuj and asked him to get five to ten dummy SIM cards. He also sent air-tickets for Respondent No.1. On 20th February 2021, Respondent No.1 came to Mumbai from Bhuj and brought the SIM

cards. Five SIM cards were given to Vinayak Shinde on 21st February 2021.

This witness's statement recorded by NIA shows that Sachin Waze had asked him to arrange five SIM cards without documents. After this demand was made by Waze this witness had gone back to his office and had discussed this matter with Respondent No.1 and at that time Respondent No.1 had told him that he could arrange for SIM cards from his earlier references. On the very day when KW-14 discussed about the SIM cards with him, Respondent No.1 went to his home-town at Bhuj. After ten to twelve days, he returned Mumbai with fourteen SIM cards. On 21st February 2021 those SIM cards were given to Vinayak Shinde.

In this background, it has to be noted that before 21st February 2021 the first step in the offence of planting explosives was already taken. On 18th February 2021, the deceased Mansukh Hiran had lodged his FIR vide C.R. No.47/2021 at Vikhroli police station pertaining to theft of his Scorpio vehicle. Gelatine sticks and the vehicle were recovered on 25th February 2021. In the entire part of procuring the Scorpio vehicle, loading it with Gelatine sticks and parking it on Carmichael road, the SIM card brought by Respondent No.1 was not used. The execution of

plan to plant these explosives was already initiated on 17th February 2021 when Mansukh Hiran had given keys of his car to Waze. In any case, that particular SIM card was not used in that part of the offence of putting the explosives in a car and parking that car. There was no direct discussion between Sachin Waze or any other accused except Vinayak Shinde with the present Respondent No.1. Vinayak Shinde met Respondent No.1 only on 21st February 2021. Therefore, there is nothing to show that Respondent No.1 was aware or had knowledge of the conspiracy to park the explosive laden vehicle on Carmichael road. He only knew that Sachin Waze had demanded five SIM cards through his employer. This information also was provided to him by his employer i.e. KW-14 himself.

28. The prosecution case in respect of Mansukh Hiran's murder is reflected in the brief of the facts as mentioned in paragraphs-17.34 to 17.37 of the charge-sheet, which read thus:

***“17.34** After having realised that investigation relating to planting of the explosive laden SUV and threat letter was getting transferred to a senior officer, accused Sachin Waze (A-1) the then Investigating officer of Crime No. 40/2021 pressurised Mansukh Hiran to take up the responsibility for the said crime, so that the investigation of the case can be vitiated in his favour. Accused Sachin Waze (A-1) was also assuring*

Mansukh Hiran that the latter would be immediately bailed out in the said case. The evidence collected during investigation corroborates the same.

17.35 *Investigation has further revealed that Mansukh Hiran turned down the proposal of accused Sachin Waze (A-1) to own up the responsibility of the crime. Since Mansukh Hiran was the only person who was fully aware about the vehicle being parked on the Eastern Express Highway on the directions of accused Sachin Waze (A-1) and knowing very well that the keys were handed over to Sachin Waze (A-1) near GPO, CSMT, it would have been dangerous for accused Sachin Waze (A-1), as Mansukh Hiran could reveal the involvement of Sachin Waze (A-1) in the said crime.*

17.36 *Accused Sachin Waze (A-1) was aware that Mansukh Hiran was a weak link in the conspiracy and would spill the beans easily if examined by some other investigating officer. Hence, Mansukh Hiran was a potential threat for accused Sachin Waze (A-1) and other conspirators.*

17.37 *It is established during the investigation that, accused Sachin Waze (A-1) and accused Pradeep Sharma (A-10) conspired with others to eliminate Mansukh Hiran and the task was assigned to Pradeep Sharma (A-10)."*

29. Thus, the prosecution case itself is that the conspiracy to commit murder of Mansukh Hiran was hatched after Sachin Waze realized that he was not willing to co-operate with him. While executing this conspiracy, one of the SIM cards provided by Respondent No.1 was allegedly used to make a WhatsApp call to the deceased and

to call him at a particular place. That call was made by the accused Mane. Thus, when the SIM cards were procured by Respondent No.1 on 20th February 2021 and were handed over to Vinayak Shinde on 21st February 2021, the plan to commit murder of Mansukh Hiran was not even hatched by Sachin Waze and, therefore, it would be far fetched to attribute knowledge of this plan to Respondent No.1 when he procured these SIM cards.

30. The statements of KW-14 show that Sachin Waze had threatened KW-14 and had coerced him to get five SIM cards. The ostensible reason given was that they were needed for confidential purposes. At that time, KW-14 was aware that Waze was an important police officer. He had discussed this issue with Respondent No.1 and had sought his help. There is, therefore, no connection with Respondent No.1 and Sachin Waze. It is only at the instance of KW-14, the Respondent No.1 had agreed to and had actually procured those SIM cards.

31. The charge-sheet also mentions that the Sections applied against the present Respondent No.1 are Sections 403 and 120-B of IPC only. There is no further clarification as to how Section 403 of IPC is attracted against the present Respondent No.1. No other serious

offences are mentioned in the charge-sheet against him. Learned ASG is relying on application of Section 120-B of IPC to contend that Respondent No.1 can be punished equally with other accused. In this context it is necessary to consider the guidelines discussed by the Hon'ble Supreme Court in various judgments. The essential requirements according to the above guidelines are; meeting of minds, agreement to commit an illegal act, knowledge and intent. Since it is difficult to get direct evidence regarding conspiracy, all these factors can be gathered from the attending circumstances. In the present case, none of these aspects can be gathered from the material collected during investigation against Respondent No.1. As discussed earlier, no knowledge of either planting of the explosives, parking of the vehicle or commission of murder of Mansukh Hiran; directly or indirectly can be attributed to Respondent No.1. The only strong evidence against him is that he had procured those SIM cards illegally, for which he will suffer the consequences of his act, but, this act cannot be stretched to bring it within the umbrella of the conspiracy of planting the explosives or commission of murder of Mansukh Hiran.

32. Since the fact situation in the present case is peculiar and different, it is not necessary to draw parallels between this case and the

judgments cited by Shri Gupte in the cases of *Faizan Khan* (supra) and *Paulson Joseph Palitra* (supra).

33. In deciding this Appeal, we have considered the parameters as suggested by learned ASG. On these basic parameters, we are satisfied that the impugned order does not suffer from any illegality, perversity or non-application of mind. We have even independently assessed the material against Respondent No.1. We see no reason to interfere with the impugned order. The Respondent No.1 is in custody since 21st March 2021. The prosecution has not shown any material which suggests that the Respondent No.1 would abscond or would tamper with the evidence. In any case, these apprehensions are taken care of by the learned Special Judge, by imposing conditions. Therefore, even on that count, the bail cannot be denied to the present Respondent No.1.

34. Before concluding, we clarify that the case of Respondent No.1 is entirely different from those of other accused. Therefore, the discussion made in this judgment is strictly restricted to the case of Respondent No.1 alone. It is also clarified that these observations are made only for the purpose of deciding this appeal and the trial Court shall not be influenced by any of these observations while deciding the trial.

35. As a result, the Appeal is dismissed. The order dated 20th November 2021 passed by the Special Judge below Exhibit-37(BA) in NIA Special Case No.1090/2021 is confirmed.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2021.12.21
13:37:40
+0530

Deshmane (PS)