

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL APPEAL NO. 357 OF 2022

Riyazuddin Hisamuddin Kazi,
Age : 43 years, Residing at
Mohammad Manzil, A-Wing,
101/102 Behrambag, Jogeshwari (West),
Mumbai – 400 102
Presently in judicial custody
in the Taloja Central Prison,
Taloja, Navi Mumbai

**...Appellant/
Accused No. 4**

Versus

1. National Investigating Agency,
7th Floor, MTNL, Telephone Exchange
Building, Pedder Road, Cumballa Hill,
Mumbai – 400 026

2. The State of Maharashtra

...Respondents

Dr. Yug Mohit Chaudhary a/w Mr. Hassnain Kazi, Ms. Shraddha Vavhal and Mr. Zeeshan Khan for the appellant

Mr. Anil C. Singh, Additional Solicitor General a/w Mr. Sandesh Dadasaheb Patil, Mr. Aditya Thakkar, Mr. Chintan Shah and Ms. Savita Ganoo for the Respondent No.1-NIA

Mr. J. P. Yagnik, A.P.P for the Respondent No.2-State

**CORAM : REVATI MOHITE DERE &
R. N. LADDHA, JJ.**
RESERVED ON : 02.12.2022
PRONOUNCED ON : 23.12.2022

JUDGMENT (Per Revati Mohite Dere, J.) :

1 In view of not before order passed by Justice A. S. Gadkari vide order dated 21.9.2022, the present appeal is listed before this Bench.

2 By this appeal, preferred under Section 21 of the National Investigation Agency Act, 2008 (`the NIA Act'), the appellant (A-4) has impugned the order dated 01.03.2022 passed by the Special Court (NIA), Greater Mumbai, rejecting his application for bail and as such seeks his enlargement on bail in connection with NIA RC 01/2021/NIA/MUM (NIA Special Case No. **1090/2021**), for the alleged offences punishable under Sections 120-B and 201 of the Indian Penal Code (`IPC').

Submissions of Dr. Yug Chaudhary :

3 Dr. Yug Chaudhary, learned counsel for the appellant submits that the appellant has been charge-sheeted only for the offences punishable under Sections 120-B and 201 of the IPC,

both of which, are bailable offences. He submits that the appellant was not involved in the planting of the gelatin sticks in the Scorpio vehicle which was parked near Antilia, nor was he concerned with the murder of Mansukh Hiren. He submits that the only allegation against the appellant pertains to destruction of evidence with and under the orders of the main accused Sachin Waze (A-1), after the commission of the main offence. Dr. Chaudhary submits that a perusal of the statements of the witnesses would reveal that there is absolutely no material on record to show that the appellant was involved in the destruction of evidence, as alleged by the prosecution. Dr. Chaudhary submits that the statements of the witnesses would reveal that the appellant, alongwith witness-Prakash Howal had collected CCTV Cameras, DVRs, CPUs, Registers and Bill Books from various places, on the direction of Sachin Waze (A-1) and that it was Sachin Waze (A-1), who had directed the appellant and witness-Howal not to create any documentation of the seized articles. Learned counsel submits that despite the same, the appellant

made station diary entries concerning the seized articles, which clearly show that he had no knowledge of the intent of Sachin Waze. Dr. Chaudhary further submits that it is a matter of record that the NIA had applied for sanction under Sections 45A of the Unlawful Activities (Prevention) Act, 1967 ('UAPA') as against all the accused, however, sanction was not accorded to the appellant, pursuant to which, the other co-accused have been prosecuted, apart from the other provisions, even under Sections 16, 18 and 20 of the UAPA. Dr. Chaudhary submits that since the appellant has been charge-sheeted only for the offences punishable under Sections 120-B and 201 of the IPC, the question of applying the bar under Section 43D (5) of the UAPA does not arise. He submits that neither has any sanction been accorded under Section 39 of the Arms Act nor under Section 7 of the Explosive Substances Act. He submits that the sections alleged against the appellant are bailable and that as a matter of right, the appellant is entitled to be enlarged on bail. He submits that the appellant was arrested on 10.04.2021 and has been in custody since then i.e. for about one

year and eight months, for bailable offences.

3.1 Dr. Chaudhary mainly relied on the statement of Assistant Police Inspector (`API')-Prakash Howal to show that the role of both i.e. the appellant and Howal (witness) was identical. He submits that the statement of Howal would reveal that they were acting under the orders of Sachin Waze (A-1), who was the Investigating Officer in the said case and that the evidence was destroyed by Sachin Waze and that neither Howal nor the appellant had participated in the said destruction. He submits that on the contrary, the statement of Howal would reveal that they i.e. he and the appellant were terrified by what they saw i.e. Sachin Waze throwing bags containing CPUs, DVR, etc. in the Mithi River. According to the learned counsel, the NIA cannot pick and choose, inasmuch as, all others i.e. API-Prakash Howal, PN-Yuvaraj Shelar, PC-Shivaji Desale, KW 1 and others, who were also acting under the directions of Sachin Waze and whose role is similar or even greater, have been made witnesses, for reasons best known. Considering the material on record *qua* the

appellant, learned counsel for the appellant seeks his enlargement on bail.

Submissions of Mr. Anil Singh, the learned Additional Solicitor General (`ASG') :

4 Mr. Singh, learned ASG submits that the role of the appellant in the commission of the crime has been detailed in the main charge-sheet. He submits that the appellant, as a colleague of Sachin Waze, willingly entered into a well-organized conspiracy hatched by Sachin Waze and as such, aided Sachin Waze in arranging a fake vehicle registration plate, which was used in the commission of the offence; that after the commission of offence, the appellant aided Sachin Waze in destruction of the evidence, by illegally collecting CCTV Cameras, DVRs, which had captured the movement of the vehicle used by Sachin Waze i.e. parking of the Scorpio vehicle laden with gelatin sticks; and that, after completion of the offence, the appellant aided Sachin Waze in destruction of the articles/records, from the shops from

where Sachin Waze had procured the fake vehicle registration number plate.

4.1 During the course of submissions, the learned ASG submitted that it is not the prosecution's case that the appellant was involved either in the planting of gelatin sticks in the Scorpio vehicle near Antilia, or in the commission of the murder of Mansukh Hiren. The submission essentially against the appellant is that he illegally took possession of the DVRs, CDRs, CCTV Cameras, etc. from the shop owners and others, without preparing any panchnamas or documentation and thereafter, assisted Sachin Waze in destroying the items collected.

Relevant Facts :

5 Perused the papers with the assistance of the learned counsel for the respective parties. A few facts as are relevant to decide the appeal are as under :

5.1 On **25.02.2021**, in the wee hours, a Mahindra

Scorpio vehicle was parked on Carmichael Road, near Antilia Building i.e. near the house of a prominent businessman. On 25.02.2021 itself, the police of the Gamdevi Police Station found 20 gelatin sticks and a note, threatening a prominent industrialist and his wife in the said car. Pursuant thereto, the Gamdevi Police lodged an FIR, which was registered vide CR No. 35/2021 under Sections 286, 465, 473, 506(2) and 120B of the IPC and under Section 4(a)(b)(i) of the Explosive Substances Act, against unknown persons.

5.2 The said C.R was transferred to the Crime Intelligence Unit, Crime Branch, Mumbai ('the CIU') and the case came to be re-registered as **CR No. 40/2021**. The investigation of the said case was assigned to Sachin Waze, the then API, CIU, Crime Branch, Mumbai, for investigation. During the course of investigation, it was learnt that the Scorpio vehicle which was found, had a fake number plate and that the actual number of the vehicle was MH-02-AY-2815. In respect of the said Scorpio vehicle, a separate C.R i.e. **C.R No. 47/2021** was registered with

the **Vikhroli Police Station, Mumbai**, by Mansukh Hiren (deceased) on **18.02.2021** alleging an offence punishable under Section 379 of the IPC. According to Mansukh Hiren (deceased), his vehicle i.e. Scorpio vehicle was stolen on 17.02.2021, by unknown person/persons.

5.3 The investigation of the said CR i.e. CR No. 47/2021 registered with the Vikhroli Police Station also came to be transferred to CIU, Crime Branch, Mumbai and the said CR was re-registered as CR No. 41/2021. The investigation of the said case was also assigned to Sachin Waze (A-1).

5.4 On 01.03.2021 and 02.03.2021, Mansukh Hiren (deceased) was summoned by the CIU, Crime Branch, pursuant to which, Mansukh Hiren attended the CIU Office on **02.03.2021** and **03.03.2021**.

5.5 On **04.03.2021**, Mansukh Hiren left his house to meet one police officer named Tawde, after which, he did not return home. Pursuant thereto, on the next day, i.e. on

05.03.2021, a missing person's complaint was filed at the Naupada Police Station, Thane, by Mansukh Hiren's son-Meet Hiren. The said complaint was registered vide Missing Persons Report No. 16/2021.

5.6 On **05.03.2021**, Mansukh Hiren's dead body was found in the creek area of Retibunder, by Mumbra Police. Pursuant thereto, an **Accidental Death Report No. 39/2021** under Section 174 of the Code of Criminal Procedure (`Cr.P.C') was registered by the **Mumbra Police Station**. During the course of investigation by the Mumbra Police, Mansukh Hiren's widow-Vimla Hiren, in her written complaint before the ATS, Thane Unit, alleged foul play and expressed her suspicion against Sachin Waze.

5.7 On **06.03.2021**, the Government of Maharashtra issued an order transferring the cases relating to placing of explosive laden Scorpio SUV, theft of Scorpio vehicle and the

ADR case of Mansukh Hiren, to the Anti Terrorist Squad (`ATS'), Maharashtra, for further investigation.

5.8 On **07.03.2021**, the ATS, Maharashtra converted the ADR No. 39/2021 into an offence of murder and re-registered the case as **CR No. 12/2021**, alleging offences punishable under Sections 302, 201, 34, 120-B of the IPC, as against unknown persons, for the murder of Mansukh Hiren. The cases relating to placing of explosive laden Scorpio SUV and theft of Scorpio vehicle were re-registered by the ATS, Maharashtra, as CR Nos. 10/2021 and 11/2021 respectively.

5.9 On **08.03.2021**, **20.03.2021** and **21.03.2021**, as per the directions of the Ministry of Home Affairs, Government of India, the NIA took over the investigation of the aforesaid cases and directed the NIA to suo-motu register a case and take up the investigation. Accordingly, the case was re-registered by NIA, as **NIA RC 01/2021/NIA/MUM** on **08.03.2021** and the original case

papers and articles were handed over by the ATS, Maharashtra to NIA, **BO-Mumbai**, on 10.03.2021.

5.10 During the course of investigation, it was found that Sachin Waze (A-1), alongwith other co-accused had committed heinous and serious offences attracting the provisions of the UAPA and hence, Sections 16, 18 and 20 of the UAPA, were invoked.

5.11 During the course of investigation, several persons involved in the commission of the offence were arrested. On completion of investigation, the NIA filed charge-sheet on **03.09.2021** as against 10 accused. We are informed that the NIA has also filed an application under Section 173(8) of the Cr.P.C.

5.12 In the charge-sheet filed by the NIA, in paragraph 18 i.e. '**18-CHARGES**', the allegations as against the appellant are set-out in para **18.4**. The said para reads as under :

“18.4 Offences committed by accused A-4:- As a colleague of A-1, he willingly entered into a well-organized conspiracy hatched by A-1, and he aided A-1 in arranging fake vehicle registration number plates which were used in the commission of offences in the case. After commission of the offences, he aided A-1 in destruction of evidence by illegally taking over CCTV DVRs which had captured movement of alleged vehicles used by A-1 during the placing of Scorpio vehicle laden with Gelatin (Explosive). After commission of the offences, he aided A-1 in destruction of evidence by illegally taking over CCTV DVRs and records of shops from where A-1 had procured fake vehicle registration number plates. Hence A-4 is to be charged under the sections shown against his name in the table below.”

5.13 The sections alleged in the table *qua* the appellant are in **Para 18.12**. The sections with which the appellant has been charged are Sections **120B and 201** of the IPC.

5.14 The statements relied upon by the NIA with respect to the charge as against the appellant, are of API-Prakash Howal; PN-Yuvaraj Shelar; KW-1; PC-Shivaji Desale; PC-Pandit Banjara; PC-Mansur Shaikh, PC-Sameer Gawkar, PC-Pankaj Bhosale, PI-

Santosh Kotwal, KW-11, Nikhil Shah. Some documents were also relied upon. Dr. Chaudhary has also relied on the very same statements of the witnesses to show that none of the statements reveal the complicity of the appellant in the alleged crime, taking their statements, as they stand.

REASONS :

6 A perusal of the statement of API-Howal, who is the prime witness as per the prosecution, reveals, that he was working as an API in the CIU; that the CIU would handle confidential matters, apart from other important cases which were marked to CIU for further investigation; that he came in contact with Sachin Waze (A-1) as In-charge Officer, when he joined the CIU, in June 2020; that since then, he was working under him; and that Sachin Waze (A-1) would come to the office in his own vehicles i.e. BMW or Mercedes or Mitsubishi or Toyota Prado, which he used to drive himself.

6.1 Witness-Prakash Howal has further stated, that the investigation of Gamdevi Police Station and Vikhroli Police Station i.e. FIR Nos. 35/2021 (parking of Scorpio Vehicle laden with gelatin sticks) and 47/2021 (theft of Scorpio Vehicle) respectively, were transferred to CIU, Mumbai, for further investigation; that the Investigating Officer in both the cases was Sachin Waze, Unit In-charge of CIU; and that he was one of the team members of the investigation pertaining to both the C.Rs registered with the Gamdevi Police Station and Vikhroli Police Station.

6.2 According to the said witness (Howal), on **25.02.2021** at around 17.30 hours, Sachin Waze called him and told him to come near Antilia, pursuant to which, he left from CIU office; that on the way, he received a call from PC-Shaikh (Driver), who told him that Sachin Waze had asked him to come to Girgaon Chowpaty Police Chowky, pursuant to which he went to Girgaon Chowpaty Police Chowky; that he did not enter the

Police Chowky, as there were senior Officers who had visited the said Police Chowky; that after sometime, Sachin Waze told him that a Scorpio vehicle laden with gelatin sticks, was found near Antilia; and that the said vehicle was towed and parked behind Girgaon Chowpaty Police Chowky. He has further stated that thereafter, he accompanied Sachin Waze to Varsha Bungalow, where a meeting was held; that after the meeting, they came back to CIU Office; that Sachin Waze, after the meeting, told him that the said case would be investigated by their unit i.e. CIU Unit and that he would be the Investigating Officer; that on **26.02.2021** the case of theft registered with the Vikhroli Police Station with respect to the Scorpio vehicle given by Mansukh Hiren was transferred to CIU for further investigation; that on the said date, Mansukh Hiren came to the office; that two NIA Officers also came to meet Sachin Waze; that he learnt on that day that the said vehicle which was found parked near Antilia, belonged to Mansukh Hiren; that in the evening, Sachin Waze, the appellant, PN-Yuvaraj Shelar and himself visited the scene of crime; that as

per the direction of Sachin Waze (A-1), they came to Gamdevi Police Station and took the seized articles, as the investigation was handed over to the CIU; that on **27.02.2021**, as per the directions of Sachin Waze, the appellant, PN-Yuvaraj Shelar, PC-Shaikh (Driver) and himself came to Peddar Road; that the purpose of the visit was to gather information about the incident dated 25.02.2021; that when they took search for CCTV camera in the surrounding area, they found one Bungalow (Nikhil Villa) and noticed that the CCTV Camera was facing towards the roadside; that on inquiry with the owner of that bungalow about the road facing camera footage, he readily handed over the DVR; that they kept the said DVR in the office vehicle (that the said DVR was later returned back by him and the appellant, to the owner); that on the same day, when they came back to the office, Sachin Waze told them that he had issued a written order and as such, had directed them to look for CCTV footages and number plate makers in the surrounding area of Eastern Express Highway and Thane City; that on the same day, at around 4:00 p.m, Sachin

Waze told them that they were going to check the CCTV footages and number plate makers; that Sachin Waze alongwith appellant and himself proceeded in his private vehicle and PN-Yuvaraj Shelar, PC-Desale and PC-Shaikh (Driver) came in the office vehicle; that when they reached Thane, Sachin Waze stopped his car near one car accessories shop `Sadguru Car Decor`; that they went in the said shop and made inquiry, checked documents; then Sachin Waze directed the shop owner to give the DVR, pursuant to which, the DVR was handed over, which was kept in the office Vehicle; that from there, they left and went to another shop i.e. Classic Car Decor, the shop owned by Mansukh Hiren; that he knew Mansukh Hiren, as he had previously visited the CIU Office to meet Sachin Waze on 26.02.2021; that all of them got down from the vehicle and went to the said shop; that at the said shop, Sachin Waze met Mansukh Hiren and they were discussing for sometime; then Mansukh Hiren handed over the DVR of his shop and the said DVR was also kept in the office vehicle; from there, they went to Saket Complex i.e. the residence of Sachin Waze;

that Sachin Waze instructed the appellant and him to check the CCTV footage and collect the DVR from the said society; that as per the instructions, two DVR's of CCTV footage were collected by giving notice under Section 91 of the Cr.P.C (the said notice was signed by the appellant); that after taking the DVR, they left for Mumbai; that at Teen Hath Naka Junction, Sachin Waze told PN-Shelar and PC-Desale that they could leave if they wanted, pursuant to which, they left and only PC-Shaikh (Driver) followed them in his official car; that thereafter, they came to Dnyaneshwari Bungalow for a meeting; that thereafter, they returned to CIU Office; and that, Sachin Waze dropped them near the Office Gate and told them to keep the collected DVRs in the Office.

6.3 Witness-Prakash Howal has further stated when asked about his role in the investigation of the said case, that he was acting as per the directions of Sachin Waze and that as per the directions of Sachin Waze, he had visited the scene of crime and

surrounding areas of Thane and Mumbai. He has stated that he visited the areas alongwith the appellant and Sachin Waze. He has further stated that when they (appellant and himself) collected the DVRs from Saket Complex i.e. where Sachin Waze was residing, they had not sealed the said DVRs, as they were specifically directed by Sachin Waze for collecting the DVRs, without proceeding. He has further stated that the said DVRs were handed over by the appellant to Sachin Waze with a written report in the CIU Office, as Sachin Waze was the Investigating Officer of the said case. The statement of Howal further reveals that on 01.03.2021, he went to Mulund, pursuant to a call made by Sachin Waze; that when he reached Mulund, the appellant was present with Sachin Waze. He has stated that Sachin Waze took them i.e. the appellant and himself to one 'Arihant shop', where Sachin Waze and one person-Devendra had some discussion; that thereafter, the said person called another person- Umang; that Sachin Waze told them i.e. the appellant and him, to go to the shop shown by the said person and check registers, number

plates, CCTV footage and also directed them to take the DVR from the said shop; that Sachin Waze had also directed them not to seize or prepare any documents/proceeding, while taking the registers, DVR, etc. He has further stated that thereafter, they went to a shop by the name `Pixel`; that they checked the registers, inquired about the number plates, CCTV footage, etc; that when they were in the said shop, the other staff of CIU i.e. the Driver-Shere, PN-Yuvaraj Shelar and PC-Salve also came there; that from the said shop `Pixel`, they took a CPU and a CCTV camera for investigation purpose; that, although, Sachin Waze was not present, under his instructions, they did not serve any notice to the shop owner nor did they make any panchnama for taking over the CPU and the CCTV camera; that thereafter they went to `Arihant shop`, where Sachin Waze was present; that thereafter, on the instructions of Sachin Waze, a team of Crime Branch, Unit-7 came there and the appellant passed on the instructions given by Sachin Waze, regarding checking of the CCTV footage and number plate makers in the surrounding

areas. Howal has further stated that from 'Arihant shop', they went for lunch to a nearby hotel; that after lunch, Sachin Waze once again dropped them near 'Pixel shop', as the CCTV Camera had remained to be collected; that from there, Sachin Waze left and as per the instructions of Sachin Waze, they visited 'Arihant shop', where the shop owner gave the DVR; thereafter, they went to Thane and met one person by the name, Namdev, who is famous for making number plates; that as the said number was not found in his register, the same was returned and they came back to the CIU Office. According to witness-Howal, the CPU and CCTV camera taken from Pixel shop and a DVR given by Arihant shop owner, were kept in the office; that Sachin Waze had asked them what investigation was done regarding the seized vehicle number plates and asked him to investigate the same, and hence, he and the appellant made inquiries in the areas in Thane, with different number plate makers, however, did not get any lead and as such informed Sachin Waze about it. He has further stated that later, he accompanied the appellant to Vikhroli, where

the appellant spoke to two-three persons; that he learnt later, that the appellant had taken a CPU from a shop as per the directions of Sachin Waze and that the shop owner was asking for his CPU and the appellant was convincing him that Sachin Waze was ready to give money, if their work was stuck due to CPU, as it would take some more time to return the same.

6.4 Prakash Howal has further, in his statement, stated that a vehicle similar to the Scorpio vehicle, which was found near Antilia, used to be parked in the compound of the Mumbai CP Office and that many times, it was used by the police persons posted at CIU, Mumbai, for investigation purpose. According to Howal, on **03.03.2021**, at around 9:00 to 9:30 p.m, when he and the appellant were present in Sachin Waze's cabin, Sachin Waze received a call on his mobile; that he heard Sachin Waze saying, *"You leave from there and I will leave from here. We will meet near Chakala Petrol Pump. Before leaving, you switch off your mobile phone and mine also will be switched off. We will*

wait at the spot for each other.” He has stated that he did not know with whom Sachin Waze was speaking over the phone, but later, learnt that the said call was from PI-Mane, In-Charge of Crime Branch, Unit-11.

6.5 According to Howal on **04.03.2021**, he and the appellant were called in Sachin Waze’s cabin; that Sachin Waze told them that they were going to conduct a raid on a bar and that if they wished to join him, they could, to which, they replied in the affirmative; that Sachin Waze told them that the proposed raid would be conducted late night; that thereafter, they left the CP office compound; went for dinner and again returned to the CP office; that Sachin Waze asked the appellant to call the staff and PSI-Lohakare, pursuant to which, they all left for conducting a raid on the bar located at Dongri, Mumbai; that they conducted the raid but found nothing suspicious and that thereafter, they all left for their respective homes.

6.6 Howal has further stated that on **05.03.2021**, when he was in CIU Office, he learnt from a TV Channel that Mansukh Hiren's dead body was found at Retibunder, Thane; that he learnt that Sachin Waze and ACP-Alaknure had visited Thane; that on his return, Sachin Waze told him and the appellant to accompany him to Varsha Bungalow; that Sachin Waze went inside and when he returned, they all went out for dinner; that whilst having dinner, Sachin Waze discussed about the dead body of Mansukh Hiren being found and asked them what they thought, whether it was murder or suicide; that thereafter, Sachin Waze and PC-Salve went towards the office and the appellant and he went home.

6.7 Prakash Howal has further stated that on **06.03.2021**, Sachin Waze asked him and the appellant to accompany him; that Sachin Waze got down from his vehicle near P.D'Mello Road in a small lane besides Hotel Dazzel, where KW-12 met Sachin Waze; that Sachin Waze and KW-12 went ahead and were

discussing and that he and the appellant were waiting at the hotel, at some distance; that thereafter they had tea and again sat in the vehicle; that Sachin Waze, whilst driving the vehicle towards the Free Way, asked them to switch off their mobile phones, pursuant to which, he switched off his mobile phone; that Sachin Waze looked confused and stressed and was uttering words like, he wanted to commit suicide and so on; that ATS may book him in the unnatural death of Mansukh Hiren; that at BKC, Sachin Waze stopped his vehicle, got down from the car and again started talking irrelevant; that as Sachin Waze was hungry, from there they came back to the CIU Office; that Sachin Waze was in his cabin for 10 to 15 minutes; that Sachin Waze told them to switch on their mobile phones; thereafter, they went for dinner; after dinner, Sachin Waze again told them to switch off their mobile phones; from there Sachin Waze drove his car and came near BKC, where he dropped the appellant and later dropped him at the Eastern Express Way.

6.8 According to Prakash Howal, on 06.03.2021, at about 6:30 p.m, he saw Yuvaraj Shelar and Shivaji Desale, on the direction of the appellant, picking and keeping a Nylon bag, having zip in the Mercedes-Benz Car; that thereafter, Sachin Waze drove the said car and that he and the appellant accompanied Sachin Waze, in the said car.

6.9 Prakash Howal has further stated that on **08.03.2021**, the appellant got a message from ACP-Alaknure for handing over the DVR of Saket Society to ATS, Vikhroli Unit, and hence, he accompanied the appellant to the ATS Office, Vikhroli Unit, for handing over the said DVR. He has stated that when they reached the ATS Office at Vikhroli, ACP-Kale was not there in the office, so the appellant called him; that ACP-Kale asked whether the DVR was in a sealed condition, to which, the appellant replied in the negative; that the appellant called ACP-Alaknure and told him about it, to which, ACP-Alaknure told him to bring back the DVR and make Station Diary entry. Accordingly, as per

the instructions, they (appellant and himself) returned to the CIU Office; that at the office, writer-Nalawde gave a written order of ACP-Alaknure to the appellant, mentioning that the said DVR be kept in his possession, but the appellant did not accept the order, as he was not having a personal locker for keeping the DVR and hence, the DVR was kept at some other place; that at around 10:00 p.m, Sachin Waze came to the office and after 10 to 15 minutes, told all the staff to go home, however, asked appellant and him to stay back in the office. He has stated that they were not aware why they were asked to wait in the Office. He has stated that thereafter, the appellant and he went down and waited in the CP Office compound for about one to two hours; that around 0015 hours, they went to the Office and were sitting in their regular places; that after 10 to 15 minutes, Sachin Waze told them to accompany him; that they all came down and sat in Sachin Waze's black Mercedes Car; that Sachin Waze, once again told them to switch off their mobile; accordingly, he switched off his mobile; that from CP Office Compound, they went by Free

Way towards BKC; that again Sachin Waze was speaking unrelated things; that he was saying that if something happened to him, he would commit suicide; that Sachin Waze drove the vehicle to many places and finally stopped at BKC Road, near one over-bridge of Mithi river; that at that place, Sachin Waze told them to get down from the vehicle. The most relevant part of the statement of the said witness is reproduced herein under :

“At said place API Waze told us to get down from vehicle and further told us to wait at one lane besides road and come to him after ten minutes. At that time we were not in a position to ask him, why API Waze told us to get down at the said place. We were under pressure, so got down from vehicle and waited for him in one lane, then API Waze went ahead and parked vehicle at one corner of road. We observed him from behind (API Waze) by hiding ourselves. API Waze took out some articles from the dickey of vehicle and threw it into the Mithi River. As we were looking at some distance, I observed that a CPU size articles was also thrown in Mithi River. API Waze three / four times came near dickey, then took some articles and finally threw it in Mithi River. As we were standing at some distance and it was a mid-night time, we could not observed the articles. When the movement of API Waze from vehicle to the Mithi River was stopped, we slowly went towards him. When we reached near him, API

Waze sat in vehicle. When API Waze getting to start his vehicle, he first asked API Kazi has he seen anything? On which API Kazi denied it. Then same question API Waze asked me, on which I also denied. Then from there we came at BKC and at said place API Waze dropped API Kazi. Then he (API Waze) dropped me near Eastern Express Highway at Shivaji Nagar, from there I came home in auto rickshaw. During this period API Kazi and myself were very frightened, so we did not discuss about the incidence among ourselves and to anyone else.”

7 The statement of the said witness is corroborated by the owners of the shops i.e. Sadguru Car Decor, Classic Car Decor, Arihant Cars, Pixel Graphics, Bunty Radium, as well as the owner of Nikhil Villa and the Secretary of Saket Complex, Thane, that the appellant and Prakash Howal had accompanied Sachin Waze and had taken the articles, without any documentation.

8 As far as the submission of the learned ASG, that the DVR was forcibly taken from the owner of Nikhil Villa is concerned, the said submission is contrary to the statement of

Prakash Howal as well as the owner of Nikhil Villa. The statements of both the said witnesses do not show that the DVR was forcibly taken by the appellant from the owner of Nikhil Villa. Infact, the statements show that the DVR was readily handed over by the owner of Nikhil Villa and that the said DVR was returned to the owner on 11.03.2021/12.03.2021, by Howal (witness) and the appellant. There are no allegations of tampering of the said DVR.

9 As far as the statements of PN-Yuvaraj Shelar, PC-Desale and API-Prakash Howal are concerned, that the appellant had asked them to keep the bags in Sachin Waze's car on 06.03.2021, which were later destroyed by Sachin Waze on 08.03.2021, there is nothing in the statements to *prima facie* show that the appellant had knowledge with respect to the contents of the bags. *Prima-facie*, the statements of the said witnesses, do not reveal that the appellant was aware of the intention of Sachin Waze i.e. of destruction of the articles. The

relevant portion of Howal's statement, reproduced herein-above, does not even *prima facie* show that the appellant had knowledge of Sachin Waze's intention to destroy evidence.

10 According to Yuvaraj Shelar, on 06.02.2021 (sic 06.03.2021), the appellant gave him the key of Sachin Waze's Mercedes Benz Car and told him to keep some articles in the said car and asked him to take help of some more persons. He has stated that thereafter, he met Pankaj Bhosale and told him to open the dickey of Sachin Waze's car, as he had some luggage, which had to be kept in the dickey, that he noticed PC-Shivaji Desale there; that he and Desale took two Nylon bags; that one big bag contained some metal device like a CPU and the other bag contained some papers and books. He has stated that thereafter, Sachin Waze, the appellant and Howal (witness) sat in the car and left the CP office. The statements of PC-Desale and PC-Bhosale are on similar lines. These statements *prima facie*, are also of no assistance to the prosecution, inasmuch as, the appellant is only

alleged to have given Sachin Waze's car key to Yuvaraj Shelar, for keeping the luggage in the car. *Prima facie*, having perused Howal's statement, it appears that the appellant had no knowledge that Sachin Waze was going to destroy the articles or of Sachin Waze's involvement in the murder of Mansukh Hiren or in planting of gelatin sticks in the Scorpio vehicle.

11 *Prima facie*, the evidence on record shows that the appellant and Prakash Howal (witness), PN-Yuvaraj Shelar, PC-Shaikh and PC-Desale, accompanied Sachin Waze in the seizure of DVRs, CCTV footages, CPU, CCTV Camera, registers, bill books, mobile phones, diary, etc. and had acted on the directions of Sachin Waze. As far as documentation of Saket Society is concerned, Sachin Waze had directed not to create any documentation, however, the statement of the Secretary of Saket Society shows, that a notice under Section 91 (written by witness—Howal and signed by the appellant), was issued by the appellant, for taking the Society's DVRs.

12 It also *prima facie* appears from the evidence on record, that although panchnama was not carried out by either Prakash Howal or the appellant, the appellant, on returning to the CIU Office, has made station diary entries, with respect to the seizure of articles. The said entries made in the station diary and relied upon by the learned counsel for the appellant, have not been disputed. It thus appears that the appellant had made entries in the Station Diary/Case Diary to show seizure of articles from the shops/Saket Complex, though, he was prevented/directed by Sachin Waze from making any documentation. The said station diary entries of the CIU are at page Nos.499 to 503. The relevant entries are as follows :

Date & Time	Station Diary Entry No.	Place from where articles seized	Description of Seized Articles/Entry in Diary
01/03/2021 at 22:00 hrs.	19	Shops in Thane area (Fake number plates) and Arihant Stores	CPU, Register, DVR and CCTV Camera (seized articles handed over to Sachin Waze)
02/03/2021 at 12:30 p.m	9	Bunty Kannamwar Vikhroli Radium, Nagar,	Computer CPU, 1 Register and 1 receipt book (seized articles handed over to Sachin Waze)

03/03/2021 10:40 hrs.	at 4	Sadguru Car Decor	On directions of Sachin Waze, left for Sadguru Car Decor, Thane.
13:30 hrs.	8	Sadguru Car Decor	Diary (Seized Diary handed over to Sachin Waze)
11/03/2021 15:30 hrs.	10	Bunty Radium	Left for Bunty Radium on instructions of Sachin Waze.

13 It is the prosecution case, that panchnamas were not made intentionally and deliberately for the purpose of destroying evidence. *Prima facie*, it appears that Sachin Waze had directed the officers including appellant not to make any documentation. *Prima facie*, it appears that despite the same, the appellant has made station diary entries as stated above, regarding the seizure of articles. As far as DVRs' seizure from Saket Complex, where Sachin Waze was residing, as the Secretary of the Society was not willing to handover the DVRs, despite the direction of Sachin Waze not to create any document, the appellant and Howal (witness) issued a notice dated 27th February 2021 under Section 91 Cr.PC. It appears from the document on record that after the DVRs were brought from Saket Complex, the appellant submitted

his report dated 27th February 2021 to Sachin Waze, regarding seizure of the DVRs from Saket Society.

14 *Prima facie*, there is not a single statement in the entire charge-sheet, atleast not pointed out to us, to show that the appellant himself destroyed any of the seized articles. It is the prosecution case, that the appellant, alongwith Sachin Waze, destroyed the articles in Mithi River, however, a perusal of the statement of Howal, the relevant portion of which, is reproduced herein-above, is to the contrary. It appears from the said statement that both of them i.e. the appellant and Howal, were asked to wait at a distance from where the appellant and Howal watched Sachin Waze destroying the articles by throwing them in the Mithi river. It further reveals that Sachin Waze asked the appellant and Howal whether they had seen anything, to which, both replied in the negative. Howal has specifically in his statement stated that after seeing Sachin Waze throwing bags in the Mithi River, they both were frightened.

15 Admittedly, during investigation, nothing incriminating was found/seized from the appellant. No material has been pointed out by the NIA, to show that the appellant was involved in anyway in preparing fake number plates or had himself destroyed the items so seized from shops. Infact, API – Howal’s statement, *prima facie*, shows that it was Sachin Waze who destroyed the articles collected from the shops. Evidence collected by NIA shows, that the role of the appellant is similar to the other officers, who are witnesses in the said case. The statements of witnesses, *prima facie*, shows that all were acting under the directions of Sachin Waze. It is pertinent to note, that Sachin Waze vide letter dated 27th February 2021 had issued an order directing the appellant and Howal (witness) to conduct an inquiry with respect to the persons preparing Car number plates in Thane; to check the CCTV footage of the shops, in respect of 4 number plates (specified in the letter) and to submit a report.

16 As far as the submission of the learned ASG that the appellant was present with Sachin Waze, when Sachin Waze asked KW-12 for hammer and kerosene and when the same was handed over to Sachin Waze is concerned, the statement of witness of KW-12 and Howal, are to the contrary. The statement of Howal shows that Sachin Waze alongwith KW-12 had gone at some distance and were discussing something and that Howal and the appellant were waiting at the hotel, at some distance; that thereafter they had tea and again sat in the vehicle. The statement of KW-12 also shows that Sachin Waze had taken him to the side and asked him to give kerosene and hammer to him. KW-12 has stated that when he asked Sachin Waze, why he wanted the said articles, Sachin Waze replied that he needed it for an operation, pursuant to which, the said witness procured the articles from a nearby ration shop and kept the said hammer and kerosene in Sachin Waze's car, on his direction. The said submission of the learned ASG is, therefore, unfounded, having regard to the statements on record.

17 Admittedly, as noted above and as conceded by the learned ASG, the appellant is not involved or connected with the incident of the parking of the Scorpio vehicle near Antilia, which was found laden with gelatin sticks, nor was he concerned with the murder of Mansukh Hiren. The allegation as against the appellant only pertains to destruction of evidence.

18 The sections applied *qua* the appellant in the charge-sheet are, Sections 120-B and 201 of the IPC. Although, the learned ASG contended that under Section 120-B, the appellant is liable to the same punishment as Sachin Waze i.e. for the murder of Mansukh Hiren, we are afraid, we cannot accede to the said submission, as, it is not the case of the prosecution that the appellant was involved in the murder of Mansukh Hiren. The only allegation against the appellant, is of destruction of articles. *Prima facie*, we are doubtful, having regard to the statements, whether it can be said that the appellant destroyed any of the articles. Even, if it is accepted that the appellant aided

Sachin Waze in destruction of evidence, at the highest, the offence would be one under Section 201 and 120-B of the IPC, which are both, bailable.

19 As noted above, neither has the UAPA nor the Arms Act or Explosive Substances Act, been invoked against the appellant.

20 It is also pertinent to note that other co-accused in the said case i.e. Naresh Ramniklal Gaur @ Gor and Another were charged only for the offences under Sections 403 and 120B of the Indian Penal Code and were granted bail by the learned Special Judge, NIA Court. The said order granting bail was challenged by the NIA before this Court. This Court (Coram: Nitin Jamdar & Sarang V. Kotwal, JJ.) vide order dated 21.12.2021 dismissed the appeal filed by the NIA being Criminal Appeal No. 1016/2021 and as such, confirmed the order of the learned Special Judge, releasing the accused therein, on bail. Infact, even against the said accused, the allegations in the

charge-sheet and the sections applied were only Sections 403 and 120B of the IPC. No other serious offences were mentioned in the charge-sheet against the said accused. Infact, similar submissions as advanced by the learned ASG in this appeal, were made by the NIA in Criminal Appeal No. 1016/2021 i.e. with respect to Section 120B of IPC.

21 In the present case also, the learned ASG submitted that there is meeting of minds between the accused with the main accused (Sachin Waze) and that it is difficult to get direct evidence regarding conspiracy, and as such, the same would have to be gathered from the attending circumstances. At the cost of repetition, the appellant is not prosecuted for the Scorpio Vehicle laden with gelatin sticks, nor for the murder of Mansukh Hiren. Neither the appellant has been charged for the offence punishable under the UAPA, Arms Act or the Explosive Substances Act, nor any sanction been accorded against the appellant, as done for the other accused. *Prima facie*, from the evidence relied upon by the learned ASG, we find that the appellant (A-4) appears to have no knowledge either of planting of explosives in the Scorpio

vehicle or of the parking of the said vehicle near Antilia or of the commission of the murder of Mansukh Hiren.

22 Considering the material on record, as discussed herein above, we find that the appellant has made out a case for grant of bail. Accordingly, following order is passed :

ORDER

- (i) The appeal is allowed;
- (ii) The judgment and order dated 01.03.2022 passed below Exhibit 51 in NIA Special Case No. **1090/2021** by the Special Judge, is quashed and set-aside;
- (iii) The appellant is enlarged on bail on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount in connection with NIA Special Case No. **1090/2021**;
- (iv) The appellant shall attend the NIA Office at Mumbai, on the 2nd Saturday of every month between 10:00 a.m. to 11:00 a.m. from the date of his release until

further orders, except if the date in the trial Court falls on a Saturday;

- (v) The appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the NIA at Mumbai;
- (vi) The appellant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;
- (vii) The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (viii) The appellant shall deposit his passport to the Investigating Officer before his release;
- (ix) The appellant shall file an undertaking with regard to clauses (iv) to (viii) in the trial Court, within two weeks of his release.

23 Appeal is disposed of in the above terms.

24 It is made clear that the observations made herein are *prima facie*, for deciding this appeal and the trial Court to conduct the trial, on its own merits, in accordance with law, uninfluenced by the observations made in this judgment.

25 All concerned to act on the authenticated copy of this judgment.

R. N. LADDHA, J.

REVATI MOHITE DERE, J.

26 After the judgment was pronounced, learned counsel for the NIA seeks stay of the said judgment. Request for stay is rejected.

R. N. LADDHA, J.

REVATI MOHITE DERE, J.