

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

**CRIMINAL APPLICATION NO. 1431 OF 2019
IN
CRIMINAL APPEAL NO. 337 OF 2018**

Bilal Ahmed Abdul Razaq @ Bilal

... Applicant
(Ori. Accused No.10)

Versus

The State of Maharashtra

... Respondent

Mr. Mubin Solkar a/w Aamin Sopariwala i/b Mrs. Tahera Qureshi,
for the Applicant.

Mr. Raja Thakare, Senior Advocate, Spl. P.P. a/w Siddharth Jagushte,
for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
V. G. BISHT, JJ.**

**RESERVED ON : 30th JUNE 2022.
PRONOUNCED ON : 15th JULY 2022.**

ORDER : (PER : V. G. BISHT, J).

. This is an application by appellant-applicant for suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the Appeal.

2 The appellant-applicant vide judgment and order dated 28/07/2016 passed by learned Special Judge, under MCOC Act,

1999, Mumbai, has been convicted and sentenced for the offences punishable under Sections 10(a) 13, 18, 20, 23, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 ('UAPA Act' for short) to suffer rigorous imprisonment for life and to pay fine of Rs.20,000/-, in default, simple imprisonment for one year, under Section 6 of Explosive Substances Act and Section 120-B of the Indian Penal Code.

3 The prosecution case is that at the relevant time the Anti Terrorism Squad (ATS) was conducting enquiries in the incidents of Nanded Bomb Blast Case, Explosives seized in Buldhana and the Bomb Blast which took place in the year 2002, 2003 in Marathwada. During the course of enquiry, they gathered intelligence on 09/05/2006 that some explosive and weapons were likely to be transported in the region. The teams of ATS were deputed along Manmad, Yevala, Aurangabad Road. At about 4:00 p.m. the team led by ACP Shengal which was at Yevala Junction on Yevala-Aurangabad road noticed one Tata Sumo jeep coming from Manmad and going towards Aurangabad. They tried to intercept the jeep but the jeep sped away. The police then chased the said jeep

and intercepted it at Ghrushneshwar Temple, Taluka Khuldabad, Aurangabad. At that time, three occupants of the jeep, namely, Mohd. Amer Shakil Ahmed Shaikh (A-1), Abdul Azim Abdul Jamil Shaikh (A-4) and Sayyed Juber Sayyed Anwar Kadri (A-2) allegedly got down and started running away. However, A-1 was apprehended on the spot while other two made their escape good. A-1 and the Sumo jeep were taken to Khuldabad Police Station and a search of the said jeep was carried out and the huge amount of arms and ammunition were recovered. Accordingly, FIR came to be lodged.

4 According to prosecution, during the course of investigation various accused came to be arrested. Accused-Dr.Mohd. Sharif Shabbir Ahmed (A-9) revealed names of accused-Sayyed Jabiuddin @ Zabiuddin @ Jabi Sayyed Zabiuddin Ansari (A-22) and the appellant-applicant-Bilal Ahmed Abdul Razaq @ Bilal (A-10) on 17/05/2006. The appellant-applicant later on came to be arrested on 27/05/2006. Further investigation revealed the names of other accused and a charge-sheet came to be laid accordingly.

5 Heard Mr. Mubin Solkar, learned Counsel for the appellant-

applicant and Mr. Raja Thakare, Sr. Advocate, Spl. P.P. Perused the record.

6 Mr. Solkar, learned Counsel for the appellant-applicant, submits that the prosecution has placed reliance upon confession of co-accused No.1-Mohd. Amir Shakil Ahmed Shaikh and the evidence of PW No.37, regarding mobile phone of the applicant. Further, according to learned Counsel, there is no evidence of what-so-ever nature to show that the appellant-applicant was a part of any conspiracy allegedly created by the co-accused. No specific role is attributed to appellant-applicant. There are no antecedents. Since the appellant-applicant is in custody for more than 13 years and it will take some time to hear the Appeal finally, the appellant-applicant deserves to be enlarged on bail during the pendency of the present Appeal by suspending his sentence.

7 Mr. Thakare, learned Spl. P.P., on the other hand, vehemently opposed the submissions and invited our attention to the confessional statement of co-accused, namely, Mohd. Amer Shakil Ahmed Shaikh (A-1) (Exh. 1757) which has been referred

extensively by learned Special Judge and further invited our attention to the various paras, viz. 1663, 1664, 1665, 1666, 1667 and 1668. According to learned Spl. P.P., having regard to the nature of offence and there being overwhelming evidence proving the culpability of the appellant-applicant, this is not a fit case where he should be enlarged on bail.

8 The prosecution is relying upon two aspects viz. confessional statement of co-accused Mohd. Amir (A-1) and CDR record. Even learned Spl. P.P. during the course of submission emphasized that the main evidence against the appellant-applicant springs from the confessional statement of co-accused i.e. A-1. We have carefully gone through the impugned judgment and order. We also note from the impugned judgment that the learned Special Judge has quoted the said confessional statement of A-1 at para 863 and after analyzing the same, minutely noted the following facts as proved, at para 1274, which we quote hereunder:-

“1274. As per settled law, confession under Section 18 of MCOCA is a substantive evidence. Keeping open, whether it is sufficient in the facts of the case, following facts are proved from the said

confession:

i) It is proved that accused Mohd. Amer, Aslam Kashmiri, Sayyed Jabiuddin @ Zabiuddin @ Jabi @ Jabi, Sayyed Aakif and Afroz Khan and wanted accused Faiyaz Kagzi were members of SIMI (a declared unlawful association) and used to attend the programmes of SIMI;

ii) Since 1996/97, he along with accused Aslam Kashmiri started sharing common thought process to strike terror Jihad. Accused Sayyed Jabiuddin @ Zabiuddin @ Jabi @ Jabi, Sayyed Aakif and Judgment in Afroz Khan and wanted accused started sharing their common thought process for striking Jihad since 1999 and all of them were deeply involved in larger conspiracy to strike terror against India and Hindus and were calling and propagating it as *Jihad*;

iii) Said accused had support of LeT in the form of men, arms, ammunition and explosives as well as funds, for that, they were in constant contact with wanted accused Juned, a Pakistani national and member of LeT as well as militants, Abdul Rehman and Hanzala;

iv) Accused Jabiuddin @ Zabiuddin @ Jabi, Faiyaz Kagzi and Aakif had been to Katmandu, Nepal and met said Juned who trained them in use of internet and to establish contact using internet.

v) Accused Mohd. Amer, Aslam Kashmiri, Sayyed Jabiuddin @ Zabiuddin @ Jabi @ Jabi, and Afroz Khan to achieve their object of Jihad, (what they

propagated), conspired to procure arms, ammunitions and explosives via Pakistan, with the active aid of Pakistani National Juned a member of LeT ;

vi) With active role of accused Jabiuddin @ Zabiuddin @ Jabi @ Jabi and Mohd. Amer, the consignment of arms, ammunition and explosives was unloaded at Pimpalgaon on Manmad Highway from Eicher Tempo. 10 and 5 boxes, each containing AK47 rifles, its cartridges, magazines, pouches and RDX (a highly explosive material) were then loaded in Tata Sumo vehicle and Tata Indica Car respectively. Accused Amer, Juber were taking the consignment in Tata Sumo, driven by accused Azim, whereas accused Sayyed Jabiuddin @ Zabiuddin @ Jabi was carrying it in Tata Indica car, driven by accused Mujaffar;

vii) The said consignment was to be taken to Aurangabad and Beed, for its use, to achieve the object of Jihad;

viii) The arms, ammunition and explosives were to be further used to kill the then Chief Minister of Gujarat, Shri Narendra Modi and Hindu leader Shri Pravin Togdiya of Vishwa Hindu Parishad;

ix) In February 2006, accused Jabiuddin @ Zabiuddin @ Jabi @ Jabi prepared a bomb, which was planted at Ahmedabad Railway station. Due to explosion of the same there was huge damage;

x) Accused Jabiuddin @ Zabiuddin @ Jabi @ Jabi

was using mobile phone having number 9890986742. Accused Mohd. Amer obtained mobile number 9823775295 for use;

xi) On their way to Aurangabad, the Tata Sumo in which the consignment was being taken by accused Amer, was obstructed by the ATS team headed by Shri. Shengal. On failure of the driver to stop the same, they started to chase the Sumo;

xii) The fact of chase was informed by accused Amer to accused Jabiuddin @ Zabiuddin @ Jabi @ Jabi on mobile phone;

xiii) The Tata Sumo containing the consignment of arms, ammunition and explosives was intercepted near Ghrushneshwar Temple within Khultabad and accused Amer and Mujaffar were caught by ATS team with the help of local residents, whereas accused Azim was successful in his escape; and

xiv) On search of the said Sumo at Khultabad police station, AK47 rifles, cartridges, magazines, pouches and RDX was seized from the said boxes.”

9 Learned Special Judge at para 1668 observed that in the light of confession of A-1, it is clear that the appellant-applicant preached or asked the appellant-applicant on number of occasions to be ready for Jihad and which amounted to an incriminating material against the appellant-applicant and also shows that he was also involved in

the common thought process/conspiracy to strike Jihad. Learned Special Judge further observed that the appellant-applicant had also accompanied with other accused to Kashmir to meet Juned, where he was introduced to other militants.

10 We have also gone through the said confessional statement and more particularly, the various aspects noted by learned Special Judge from the confessional statement. In our considered opinion merely because the appellant-applicant attended the meetings or for that matter he was exhorted to join Jihad that by itself cannot be termed as a readiness or willingness on his part to play a major role in Jihad, particularly when there is no prima-facie cogent and convincing evidence against him. No incriminating act is imputed against the appellant-applicant in the said confessional statement.

11 It is also worth noting that the said confessional statement was retracted and disowned by A-1 which is not disputed seriously by learned Spl. P.P. Even otherwise there being an acquittal of appellant-applicant of the charges under the relevant provisions of MCOC Act, the said confessional statement which was recorded

under Section 18 of the MCOC Act pales into insignificance. Thus, the observations of the learned Special Judge based on the said confessional statement as noted by him in para 1668 prima-facie appears to be not founded on material on record.

12 Certain observations of the learned Special Judge in respect of CDR record pertaining to the mobile number of appellant-applicant is very crucial and recorded in para 1526 in impugned judgment. It has been observed by the learned Special Judge that the CDR in respect of mobile number 9856019310 used by Bilal i.e. present appellant-applicant has not been produced. The learned Special Judge further observes that when prosecution could secure CDR in respect of mobile number of other accused, who were found in contact with accused Bilal then there was no good reason for prosecution to withhold such material. Therefore, non production of CDR in respect of mobile number used by accused Bilal will not lead to any adverse inference. Apparently, there is amiss in this observation particularly when it was found by learned Special Judge that though there were CDR record in respect of other accused then there was no good reason to withhold the similar record qua the

appellant-applicant

13 Contrary to the above, the observations of the learned Special Judge, para 1670 of impugned judgment shows that the learned Special Judge held that the participation of accused Bilal in procuring consignment was proved on the basis of the crucial phone call between him and the accused Mujaffar. On the one hand, learned Special Judge finds that the CDR in respect of mobile number of appellant-applicant is not produced while on the other hand, contrarily holds that the conversation between him and accused Mujaffar was duly proved on the basis of phone call, which phone call learned Special Judge was referring to is not made clear. Be that as it may, the fact remains that no CDR record in respect of mobile number of appellant-applicant was produced before the learned Special Judge and therefore, an adverse inference should necessarily find its way to the record.

14 In that view of the matter, we are prima facie of the view that the appellant-applicant has made out a good case for grant of bail and suspension of his sentences, pending the hearing and final

disposal of his appeal. It has to be taken into consideration that the appellant-applicant is in jail since more than 16 years and therefore, this material aspect will have to be borne in mind. We are, therefore, inclined to grant the present application.

15 In the result, we pass the following order.

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two local solvent sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

16 The application is accordingly disposed of.

17 All concerned to act on the authenticated copy of this order.

V. G. BISHT, J.

REVATI MOHITE DERE, J.

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