



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

ANTICIPATORY BAIL APPLICATION NO. 2875 OF 2023

Shiv Chanduba gupta @ Shiva @
Shivnaresh Chunubad Gupta ...Applicant

Versus

The State of Maharashtra ...Respondent

Dr. Abhinav Chandrachud, i/b Sharin Pathan, for the
Applicant.

Mr. S. H. Yadav, APP for the State/Respondent.

API Sudhir Chavan, I.O. a/w PSI Sunil Sonawane (Pairavi),
present.

CORAM: N. J. JAMADAR, J.

DATED: 16th OCTOBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicant and the
learned APP for the State.

2. This is an application for pre-arrest bail in connection
with CR No.442 of 2023, registered with Charkop Police
Station, Mumbai, for the offences punishable under Sections
420, 465, 468 and 471 read with Section 34 of Indian Penal
Code, 1860 ("the Penal Code").

3. On 22nd September, 2023 pursuant to an intimation
that one Kishor Pawar was using a forged AADHAR Card,
Charkop Police apprehended the said person. It transpired

that the forged AADHAR Card was prepared at Room No.107 Building No.1 Lakdawala SRA, Nilkanth Nagar, Charkop. The police party conducted a raid. Co-accused Md. Maruf Abdul Khan and Danish Shahalam Shaikh were found thereat with the paraphernalia to prepare and print forged AADHAR Card. Few persons were also found sitting in the said room. The incriminating articles including monitor, laptop, printer, finger scanner, eye scanner, web camera, GPS receiver etc. were seized. Further investigation revealed that the said centre to prepare forged AADHAR Cards was being operated by the applicant.

4. Apprehending arrest, the applicant approached the Court of Session. As the learned Additional Sessions Judge declined to exercise the discretion, the applicant has preferred this application.

5. I have heard Dr. Chandrachud, the learned Counsel for the applicant, and Mr. Yadav, the learned APP for the State.

6. Dr. Chandrachud would urge that the applicant was not allegedly found at the place where forged AADHAR Cards were being prepared. The statement of the co-accused, therefore, cannot be pressed against the applicant. It was further submitted that there is a serious flaw in the search

and seizure operation as to said search was conducted in breach of the provisions contained in Section 94 of the Code of Criminal Procedure, 1973. The prosecution does not claim that the raiding party was authorised by the search warrant issued by the District Magistrate or the Judicial Magistrate, First Class. Since forged documents are covered by sub-clause (d) of sub-section (2) of Section 94 of the Code, the search, without warrant, was wholly illegal and, therefore, on the strength of the alleged incriminating articles recovered in the said search the applicant's personal liberty cannot be curtailed, urged Dr. Chandrachud.

7. As against this, the learned APP submitted that the applicant was running a centre to prepare forged AADHAR Card on the basis of false and fictitious identities and documents. The submission on behalf of the applicant that he had no role in the operation of the said Centre is belied by the conversations on WhatsApp between the applicant and one of the co-accused. The learned APP further submitted that, identical allegations were made against the applicant in CR No.291 of 2015 for the offences punishable under Sections 420, 465, 468 and 471 read with Section 34 of the Penal Code.

8. *Prima facie* there is material to show that the applicant and the co-accused were operating the bogus centre to issue forged AADHAR Cards. A full pledged Centre with requisite equipments was found to be operated during the course of the search.

9. The thrust of the submission on behalf of the applicant was that the search was vitiated for want of a search warrant issued by the competent Magistrate under Section 94 of the Code. To lend support to this submission, Dr. Chandrachud placed reliance on the decision of the Patna High Court in the case of *Faujdari Mistry and ors vs. The State of Bihar*¹, wherein it was held that to conduct a search the procedure as prescribed under Section 94 and 100 of the Code was required to be followed. Reliance was also placed on an order of this Court in the case of *Dilip Namdev Irale vs. The State of Maharashtra and ors.*², wherein in the context of the provisions contained in Section 6(1)(ii) and (iii) of the Maharashtra Prevention of Gambling Act (Bombay Act No.IV of 1887), it was held that the search must have been conducted in conformity with the provisions of the said Act.

1 2002 SCC Online Pat 442.

2 Cri.WP No.2999 of 2016, dtd.16/1/2019.

10. The aforesaid submissions do not advance the cause of the applicant. It is imperative to note that the police had initially apprehend a person who was allegedly using a forged AADHAR Card and on the basis of the information the raid was conducted at the place where the bogus AADHAR Card Centre was being run. In a situation of this nature, the insistence on a search warrant as envisaged by Section 94 of the Code would jeopardise the cause of immediate action to arrest the offenders while they are indulging in the offences.

11. In any event, the legality or otherwise of a search is a matter which can be appropriately taken into account while appreciating the evidentiary value seizure. An illegal search by itself does not vitiate the prosecution for all intent and purpose. A three Judge Bench of the Supreme Court in the case of *Radha Kishan vs. State of Uttar Pradesh*³ has enunciated the law in the context of illegality of search to the effect that even assuming that the search was illegal seizure of the article is not vitiated. The observations of the Court in paragraph 5 read as under:

“5. We will deal with the last for points first. So far as the alleged illegality of the search is concerned it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Sections 103 and 165 of the

3 AIR 1963 SC 822.

Code of Criminal Procedure are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues.”

12. The aforesaid pronouncement has been consistently followed. In the case of *State of Haryana vs. Rajmal and another*⁴, after adverting to the decision in the case of *Radha Kishan* (supra) it was held that the principle enunciated therein that an illegal search does not vitiate the seizure of the article and the Court in such a case has to examine the evidence regarding seizure carefully, has been consistently followed by the Supreme Court and the High Courts.

13. In view of the aforesaid enunciation of law, I am unable to persuade myself to agree with the submission of Dr. Chandrachud.

14. Evidently, the allegations are of grave nature. AADHAR Cards are being relied upon by the authorities of the State to ascertain not only the identity of the person but also to extend services and benefits. In the case at hand there is also material to indicate that the applicant had allegedly indulged in an identical activity, in the past. Custodial

4 (2011) 14 Supreme Court Cases 326.

interrogation of the applicant is, therefore, indispensable for a complete and effective investigation. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

15. Hence the following order:

: O R D E R :

- (i) The application stands rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]