

Shailaja

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

CRIMINAL APPEAL NO.147 OF 2024

Vinayak Balasaheb Shinde @ Vinu	]	Appellant
Vs.		
The Union of India and others	]	Respondents

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Mr. Dinesh Tiwari a/w Mr. Pulkeshi Gaikwad, Mr. Anish Sharma,
Mr. Parveen Bana, Mr. Nilesh i/b Mr. Pulkeshi Gaikwad, for
Appellant.

Mr. Sandesh Patil a/w Mr. Chintan Shah, for Respondent No.2-NIA.

Ms. Gauri S. Rao, A.P.P, for Respondent No.3-State.

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**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 4th SEPTEMBER, 2024.

ORAL ORDER: [Per Revati Mohite Dere, J.]

1. Heard learned Counsel for the parties.

2. By this appeal, preferred under Section 21 of the National Investigation Agency Act, 2008 (for short “the N.I.A Act”), the appellant (original Accused No.3) has impugned the order dated

20th January, 2024 passed by the learned Special Court (NIA), Greater Bombay by which, the appellant's application seeking his enlargement on bail in connection with N.I.A RC-01/2021/NIA/Mumbai (NIA Special Case No.1090 of 2021) for the alleged offences punishable under Sections 403, 384 and 120B of the Indian Penal Code, came to be rejected and as such seeks the appellant's enlargement on bail.

3. Learned Counsel for the appellant submits that the only evidence *qua* the appellant is that he supplied SIM cards purchased by Accused No.2 Naresh Gor to A-1 – Sachin Waze, who in turn, distributed the said SIM cards to other accused which were used in the commission of the offence. He submits that the appellant is in custody since 21st March, 2021. He further submits that A-2 – Naresh Gor, who had purchased the SIM cards has been released on bail by the learned Special Judge and, so also, two other accused i.e Riyazuddin Kazi and Pradeep Sharma by this Court and the Apex Court respectively. He further submits that the appellant has not been charged for the offences punishable under sections 302 of the I.P.C or under the Unlawful Activities (Prevention) Act or under the Arms or Explosive Substances Act.

4. Mr. Patil, learned Special Public Prosecutor appearing for the respondent No.2 -NIA does not dispute the fact, that the only allegation against the appellant is handing over of SIM cards purchased by A-2- Naresh Gor to A-1 – Sachin Waze. He further submits that the appellant had committed the said offence when he was released on parole in another case i.e Lakhan Bhaiya fake encounter case.

5. Perused the papers. It is not in dispute that the appellant has not been charged either under the Explosive Substances Act,1908 or under the Unlawful Activities (Prevention) Act, 1967 or under section 302 of the I.P.C, for the death of Mansukh Hiren. The only charge against the appellant is for the offences punishable under sections 384, 403, and 120B of the I.P.C. It is not in dispute that the appellant is in custody since 21st March, 2021 i.e for more than three years. The allegation essentially against the appellant is, that he handed over the SIM cards purchased by A-2 Naresh Gor to A-1- Sachin Waze, who in turn, handed over the said SIM cards to other accused, who used the same in the same commission of the offence. It is not in dispute, that A-2 – Naresh Gor who had purchased the said SIM cards has been released on bail by the learned Special

Judge, Greater Mumbai vide order dated 20th November, 2021. According to the prosecution, apart from the aforesaid, the only other material against the appellant is that he was present with A-10- Pradeep Sharma on one occasion in the CIU office and on another occasion, he was seen in the CIU office. It is not in dispute that A-10- Pradeep Sharma has been enlarged on bail by the Apex Court.

6. It is not in dispute that the appellant's conviction and sentence in Lakhan Bhaiya fake encounter case i.e imprisonment for life for the offence under Section 302 of the I.P.C has been confirmed by this Court. It is also not in dispute that the appellant has filed an appeal against his conviction and sentence in the Apex Court.

7. Considering the aforesaid i.e the only material as set out aforesaid, *qua* the appellant, and having regard to the fact that the bar of Unlawful Activities (Prevention) Act would not apply, the appeal is allowed and the appellant is enlarged on bail in NIA Special Case No.1090 of 2021 pending before the Special Court, Greater Mumbai on the following terms and conditions.

:ORDER:

- (a) The appeal is allowed.

- (b) The judgment and order dated 20th January, 2024 passed below Exhibit 282 in NIA Special Case No.1090 of 2021 by the learned Special Judge is quashed and set aside;

- (c) The appellant is enlarged on bail on executing PR Bond in the sum of Rs.50,000/- with one or two sureties in the like amount in connection with NIA Special Case No.1090 of 2021;

- (d) The appellant shall attend the NIA Office at Mumbai on the 2nd Saturday of every month between 10.00 a.m and 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;

- (e) 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;

(f) The appellant shall co-operate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(g) The appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(h) The appellant shall deposit his passport to the Investigating Officer before his release;

(i) The appellant shall file an undertaking with regard to clauses (iv) to (viii) in the Trial Court, within two weeks of his release.

8. Appeal is disposed of in the above terms.

9. 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.

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

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]