

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1268 OF 2023

Sujith Kumar Rangaswami	..	Appellant
Versus		
State of Maharashtra	..	Respondent

WITH

CRIMINAL APPEAL NO.545 OF 2024

Amit Ramchandra Baddi	..	Appellant
Versus		
State of Maharashtra	..	Respondent

WITH

CRIMINAL APPEAL NO.546 OF 2024

Ganesh Dashrath Miskin	..	Appellant
Versus		
State of Maharashtra	..	Respondent

WITH

CRIMINAL APPEAL NO.1388 OF 2023

Shrikant Jagannath Pangarkar	..	Appellant
Versus		
State of Maharashtra	..	Respondent

WITH

CRIMINAL APPEAL NO.1267 OF 2023

Bharat Jaywant Kurane	..	Appellant
Versus		
State of Maharashtra	..	Respondent

...

Mr.Virendra Ichalkaranjekar for the Appellant in APEAL/1268/23.

Mr.Sanjiv Punalekar i/b Ms.Jyoti Ghorpade for the Appellants in APEAL/545/24 and APEAL/546/24.

Mr.Karan L. Jain for the Appellant in APEAL/1388/23.

Mr.J.P.Yagnik, A.P.P. for the State/Respondent.

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**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**
DATED : 30th JULY, 2024

ORDER (PER BHARATI DANGRE, J.) :-

1. The five Appeals listed before us are filed under Section 21(4) of National Investigation Agency Act, 2008 by the respective Accused arraigned in C.R.No.11 of 2018 registered with ATS Kalachowki, Mumbai, which invoked Sections 115, 120-B, 201, 212, 379, 468, 471 of the Indian Penal Code (for short, “IPC”), Sections 4 and 5 of the Explosive Substances Act, 1908 and Section 9-B of the Explosives Act, 1884. In addition, the F.I.R. also invoked Sections 16, 18, 18(a), 18(b), 19, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 (for short, “UAPA”), Sections 3, 5, 7, 25 and 27 of the Arms Act as well as Section 37(1) read with Section 135 of the Maharashtra Police Act.

All the Appeals are filed challenging the orders refusing grant of bail to each of the Appellants, by recording that the Appellants have participated in the conspiracy and in the wake of the presumption available under Section 43(E) of UAPA and further recording that there are reasonable grounds

for believing that the accusations levelled against the Appellants are *prima facie* true.

The details of the five Appeals alongwith the date of arrest of the Appellants in the subject F.I.R. are placed below in a tabular form :-

Sr.No.	Name of the Appellant	Criminal Appeal No.	Date of Arrest
1.	Sujith Kumar Rangaswamy	1268/23	12/09/2018
2.	Amit Ramchandra Baddi	545/24	06/10/2018
3.	Ganesh Dashrath Miskin	546/24	06/10/2018
4.	Shrikant Jagannath Pangarkar	1388/23	19/08/2018
5.	Bharat Jaywant Kurane	1267/23	12/09/2018

2. The case of the prosecution from the charge-sheet placed on record, is to the following effect :-

“A] As per prosecution theory, on the basis of information received by an informant, the ATS inquired with one Sharad Kalaskar and Vaibhav Raut (Accused Nos.1 and 2 respectively). ATS raided their residential premises and seized certain arms, ammunitions and explosives from Nalasopara, District Thane. An FIR being 11 of 2018 was registered with Anti-Terrorism Squad under Section 16, 18, 20 of Unlawful Activities Prevention Act 1967 read with Sections 4 and 5 of Explosives Substance Act 1908 r/w Section 9(B) of the Explosives Act 1884 on 12.8.2018.

B] In investigation, one more place was allegedly shown at Natepute, District Solapur by Accused No.3 Sudhanva Gondhalekar and some arms were allegedly seized from that place. ATS arrested 12 persons including the Appellants

during investigation and filed charge-sheet against them on 05.12.2018 under Section 16,18, 20 of Unlawful Activities Prevention Act, 1967 read with Sections 4 and 5 of Explosives Substance Act, 1908 r/w Section 9(B) of The Explosives Act 1884 r/w 212, 115, 468, 471, 379, 201 of Indian Penal Code r/w Section 3, 5, 7, 25, 27 of Arms Act r/w Section 37(1), 137 of Maharashtra Police Act. During further investigation, two more accused came to be arrested and supplementary charge-sheet against them was filed on 12.6.2020.

C] As per prosecution, these accused formed a gang for the purpose of opposing Anti-Hindu elements. In order to accomplish this purpose, one of the targets so chosen was a western music/dance function named 'Sunburn' which was to take place in the outskirts of Pune City on and around 26th December 2017 to 31st December 2017 for celebrating the year end. It is alleged that the accused planned to disrupt the said program by throwing stones, petrol bombs, creating ruckus by use of fire arms etc.

D] As per the prosecution theory, the accused, in order to disrupt the said 'Sunburn Festival', (hereinafter referred to as 'Sunburn' for the sake of brevity) came together sometime after the Christmas of 2017 (i.e. 25th December 2017) in an office used by Accused No.3-Sudhanwa Gondhalekar at Mitramandal Chowk, Pune for discussion and planning. Some of the accused went to house in a village Mulkhed, Tal-Mulashi, Dist, Pune and assembled bombs over there to be used to disrupt Sunburn."

3. At this stage, it is necessary to mention that the act which is alleged to have been conspired, was never executed and none of the Appellant indulged in commission of any crime, either in conduct of Sunburn Festival or any such festival. The Appellants came to be arrested in connection with the said C.R. on distinct dates. The Sunburn program was in fact successfully completed without any disturbance, but the arrest in the present case was made in first week of August 2018 i.e. after 8 months after the programme was over.

4. As far as Appellant-Sujith Kumar Rangaswamy (Accused No.8) is concerned, he was shown to be arrested on 12/09/2018, while he was already arrested in an F.I.R. registered with Rajrajeshwari Police Station, Bangalore vide C.R.No.221 of 2017 (Gauri Lankesh murder case). The same situation prevails as regards Appellant-Bharat Jaywant Kurane (Accused No.9). As far as Appellants-Amit Ramchandra Baddi and Ganesh Dashrath Miskin (Accused Nos.11 and 12) are concerned, they came to be arrested on 06/10/2018 and Appellant-Shrikant Jagannath Pangarkar i.e. Accused No.4 was arrested on 19/08/2018.

5. We have heard the learned counsel Mr.Virendra Ichalkaranjekar for the Appellants in Appeal Nos.1268 and 1267 of 2023, Mr.Sanjiv Punalekar for the Appellants in Appeal Nos.545 and 546 of 2024 and Mr.Karan Jain for the Appellant in Appeal No.1388 of 2023.

The State is represented by the learned Additional Public Prosecutor Mr.J.P.Yagnik.

With their able assistance, we have perused the charge-sheet placed on record, which has compiled the material collected during investigation.

It is a common case of all the accused persons that though the prosecution has accused them of conspiring to disrupt the Sunburn programme, which was scheduled in the outskirts of Pune city between 26/12/2017 to 31/12/2017, by throwing petrol bombs and creating ruckus by use of fire arms, the plan, as alleged to have been conspired, was never executed and in fact, the Sunburn programme was concluded without any disturbance. It is also submitted by the respective Appellants collectively, that there is no evidence in the charge-sheet about the alleged conspiracy, except the references thereof in the disclosure statements of the accused themselves, but since they are not independent witnesses, they do not strengthen the case of the prosecution, that the accused had conspired to disrupt the conduct of Sunburn Festival and in terrorising the organisers and participants of the said festival, thereby attracting the provisions of UAPA.

6. The allegations faced by the accused persons are two fold; firstly as regards the seizure of certain arms and ammunition from Accused Nos.1, 2 and 3 and secondly, storage of the arms and ammunition for giving effect to the conspiracy i.e. for causing disruption in the Sunburn festival. However, it is the submission advanced on behalf of all the

Appellants that there is no recovery of any incriminating articles, either from them or at their behest.

7. When the charge-sheet placed on record is carefully perused, it contain an accusation that on 07/08/2018, secret information was received by Anti Terrorist Squad, Vikhroli unit that some residents of Pune, Satara, Solapur, Nalasopara and Mumbai were likely to indulge in a disruption activity in the city of Mumbai and Pune and even contact numbers of some of these persons were provided.

Based on this information, two suspected persons i.e. Accused No.1-Sharad Kalaskar and Accused No.2-Vaibhav Raut were apprehended and were subjected to interrogation in Vikhroli Unit. After the interrogation, the houses of these two accused were searched and from Accused No.1, certain incriminating articles in form of material for preparation of crude bomb was seized. As far as Vaibhav Raut is concerned, some inflammable substances were recovered. In addition, some crude bombs, detonators of various types, including electronic and non-electronic, safety fuse wire, soldering machine, cutter, batteries were also seized.

Inquiry with suspected persons led to Accused No.3-Sudhanwa Gondhalekar and their other associates, who are accused of the conspiracy to disrupt the unity and integrity of the country and for that purpose, they were in preparation of crude bombs and storing them at different places. The charge-sheet allege that the arrested accused were active members of 'Sanatan Sanstha' and 'Hindu Janjagruti Samiti' and they

were influenced by the philosophy of creation of 'Hindu Rashtra' and keeping this objective in mind, had conspired to eliminate all activities opposing the Hindu religion and all entities, which were preaching or writing or propounding against the said religion and were active in disruption in exhibition of movies, conduct of programmes, which according to them, in any manner brought any disrepute to the pride of Hindu religion. The charge-sheet further disclose that the persons opposing the deep rooted practices adopted in Hindu culture through their writings like Dr.Narendra Dabholkar from 'Andhashraddha Nirmulan Samiti', Shri Govind Pansare from Communist Party of India as well as Professor M.M.Kalburgi and senior journalist Smt.Gauri Lankesh, who was done to death by the motorcycle riders and the offence was registered in the State of Karnataka.

8. We have perused the impugned orders, refusing release of the Appellants before us on bail and the opposition raised by the prosecution. Paragraph 9 of the order dated 28/07/2023 passed in the case of Appellant-Bharat Jaywant Kurane (Accused No.9) reflects as below :-

"9. Per contra, vide say filed at Exh.386-A, learned SPP opposed application. It is submitted that the material seized from the co-accused Vaibhav Raut shows involvement of the applicant in the commission of crime. It is contended that the disclosure statement dated 20.08.2018 of co-accused Sudhanwa Gondhalekar also depict about role of the applicant in the conspiracy. It is contended in the say that the voluntary statement dated 20.08.2018 to 22.08.2018 of co-accused Sharad Kalaskar shows that applicant made arrangement for stay of co-accused and explosive substances were made and training was imparted in his resort. He submitted that there is ample material regarding the involvement of accused in the

crime and participation in conspiracy. After consideration of the material against accused, charges are framed against them. The matter is part-heard and prosecution is proceeding with the trial of the case. Hence, prayed for rejection of the application.”

9. In paragraph 11, the Special Judge record as under :-

“11. Perusal of documents filed along with charge-sheet, FIR reveals about the seizure of the chits during the house search of co-accused Sharad and seizure of explosive substances from the house of co-accused Vaibhav Raut. The prosecution also relied upon panchanamas regarding seizure of these articles. There are specific allegations that explosive substances were prepared at the place of applicant. The panchanama (page nos.573 to 584 of the chargesheet) shows that the applicant is identified during Test Identification Parade. The applicant had participation in the conspiracy.”

10. In rejecting the application for bail, presumption under Section 43E of UAPA has been invoked and the learned Judge has also dealt with the claim of parity against the accused, who are released on bail and concluded that the said ground is not available. It is recorded that the charges are framed and the trial is in progress and, therefore, considering the gravity and seriousness of the offence and in the wake of the impediment in Section 43(D) of UAPA, the bail application deserve rejection and was accordingly rejected.

11. An identical submission on behalf of the prosecution is recorded in the orders of the other Appellants and it is recorded that there is ample material regarding involvement of the accused in crime and their participation in hatching of conspiracy and when the charge against the accused persons having been framed with the trial being in progress, there is no justification in releasing the accused on bail.

12. When we have perused the statements of distinct witnesses, which form part of the charge-sheet, as well as the statements recorded under Section 164, we have *prima facie* formed an opinion that these statements are insufficient to establish the charge of conspiracy against the Appellants before us and moreso, we have noted that all the accused persons are arrested in the year 2018 and as on date, though the trial has commenced, only two witnesses have been examined and third witness is in the witness box, when the prosecution has cited the list of 417 witnesses. We are also informed that since September 2023, no witness is examined by the prosecution.

All the accused persons face the charge of hatching a conspiracy and reference is made to the meeting held in Pune, where the witnesses have spoken about blasting Sunburn Festival in Pune. But, as far as two accused persons i.e. Accused Nos.11 and 12 are concerned, even if the material collated is taken as it is, it has a mere reference of their presence in the meeting and the question that would deserve consideration at the time of trial is, whether this would amount to participation in conspiracy.

13. The learned counsel for the Appellants have placed reliance upon the order of the Division Bench of this Court dated 20/09/2023, passed in Criminal Appeal No.261 of 2023 in the case of Vaibhav Subhash Raut i.e. Accused No.2, who had approached this Court, when his application for bail was rejected in the subject C.R. registered with Kalachowki Police Station, for the very same reason, by which the relief prayed

for by the present Appellants was rejected. In paragraph 11 of the said order, it is specifically recorded as below :-

“11. It is pertinent to note that the minimum sentence that can be awarded under the provisions of the UAPA is 5 years and the same can extend upto life imprisonment. The appellant is in custody and had been incarcerated for the last 5 years. Learned APP, on instructions of the officer who is present, states that the prosecution intends to examine about 417 witnesses. It is not disputed that till date only 4 witnesses have been examined by the prosecution. It is also not in dispute that co-accused Avinash Pawar @ Ajit Dada, Liladhar @ Vijay Lodhi and Pratap Hajra have been enlarged on bail by the Hon’ble Apex Court and this Court as noted above.”

By relying upon the decision of the Apex Court in the case of *Union of India Vs. K.A.Najeeb*¹, and in particular, paragraphs 15 and 18, dealing with UAPA as well as the decision in the case of *Angela Harish Sontakke Vs. State of Maharashtra*², where the Apex Court has enlarged the appellant therein on bail, despite she facing charges under UAPA and under IPC, after noting that the charges were serious, but the seriousness of the charges will have to be balanced with certain other factors like period of custody suffered and the likely period within which the trial can be expected to be completed.

By recording as above, the appeal was allowed directing the appellant to enlarge on bail, subject to certain conditions being imposed.

14. Our attention is also invited to an order passed in respect of co-accused No.5-Avinash Anant Pawar @ Ajit Dada by the Apex Court on 11/08/2022, with the following observations :-

1 2021(3)SCC 713

2 SLP (Crl) No.6888 of 2015

“2. Taking into consideration the fact that the petitioner has suffered incarceration for approximately four years and there is no likelihood of an early conclusion of the trial, we are inclined to grant him bail.

3. The petitioner is, accordingly, directed to be enlarged on bail on such terms and conditions as may be imposed by the Trial Court.”

We see no reason why the benefit of the above orders shall not be extended to the Appellants before us, though the affidavit filed by the Assistant Commissioner of Police, Anti Terrorist Squad, M.S., Mumbai on 11/01/2024 has projected the Appellants to be involved in a serious offence. Though an attempt was made to submit before us that the trial has commenced, it is informed that only two witnesses are examined out of 417 witnesses and the chances of timely completion of trial appear to be bleak.

For the aforesaid reason, since the speedy trial has received a recognition of fundamental right of a person facing accusations and being subjected to trial and since all the Appellants are incarcerated since 2018, we pass the following order.

15. Needless to state that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present Appeals and the learned Judge trying the Appellants for the offences with which they are charged, shall not get influenced by the above observations, in any manner.

: **ORDER** :

(a) Appeals are allowed.

(b) (i) **Sujith Kumar Rangaswami, Appellant in Cri.Appeal No.1268 of 2023**, shall be released on bail in connection with C.R.No.11 of 2018 registered with ATS Kalachowki, Mumbai (Special Case No.401 of 2022), on furnishing P.R. Bond to the extent of Rs.50,000/- with one solvent surety in the like amount.

(ii) **Amit Ramchandra Baddi, Appellant in Cri.Appeal No.545 of 2024**, shall be released on bail in connection with C.R.No.11 of 2018 registered with ATS Kalachowki, Mumbai (Special Case No.401 of 2022) on furnishing P.R. Bond to the extent of Rs.50,000/- with one solvent surety in the like amount.

(iii) **Ganesh Dashrath Miskin, Appellant in Cri.Appeal No.546 of 2024**, shall be released on bail in connection with C.R.No.11 of 2018 registered with ATS Kalachowki, Mumbai (Special Case No.401 of 2022) on furnishing P.R. Bond to the extent of Rs.50,000/- with one solvent surety in the like amount.

(iv) **Shrikant Jagannath Pangarkar, Appellant in Cri.Appeal No.1388 of 2023**, shall be released on bail in connection with C.R.No.11 of 2018 registered with ATS Kalachowki, Mumbai (Special Case No.401 of 2022) on furnishing P.R. Bond to the extent of Rs.50,000/- with one solvent surety in the like amount.

(v) **Bharat Jaywant Kurane, Appellant in Cri.Appeal No.1267 of 2023**, shall be released on bail in connection with C.R.No.11 of 2018 registered with ATS Kalachowki, Mumbai (Special Case No.401 of 2022) on furnishing

P.R. Bond to the extent of Rs.50,000/- with one solvent surety in the like amount.

(c) The Appellants shall attend ATS Kalachowki, Mumbai on first Monday of every month between 10.00 a.m. to 12.00 noon.

(d) The Appellants shall not tamper with the prosecution witnesses/evidence.

(e) The Appellants shall appear before the Trial Court on every date and will not seek any adjournment.

(MANJUSHA DESHPANDE,J.) (BHARATI DANGRE, J.)