



2024:DHC:7009



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 20.8.2024

Pronounced on: 11.09.2024

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BAIL APPLN. 2385/2024

MOHAMMAD HANEEF MOHAMMAD ISHAQUEPetitioner
Through:Mr. Khalid Akhtar, Mr. Mohd Shadan,
Mr. Rafay Yazdani, Mr. Abdullah Akhtar and
Mr.Maaz Akhtar, Advocates

versus

STATE OF NCT DELHI
THROUGH ACP SOUTH EASTRespondent
Through:Mr. Aashneet Singh, APP for State with
ACP Ved Prakash with SI Sumit PS Special Cell,
Saket, New Delhi

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present application, the petitioner/applicant seeks regular bail in FIR No.532/2001 registered under Sections 153A/153B/120B/34/174 IPC and Sections 3/10/13 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAPA') at P.S. Special Cell, Delhi.

2. At the outset, learned counsel for the applicant submits that the applicant who has been in custody since 22.02.2024 is innocent and was not even present at the spot when the police conducted the raid. He submits that

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the name of the accused has been falsely roped in, as the FIR that was registered on 28.09.2001 did not mention the presence of any person other than 4 co-accused namely; *Shahid Badar, Irfan Ahmed, Md. Khalid, and Saif Nachan* who were arrested from the headquarters of Student Islamic Movement of India (hereinafter referred to as 'SIMI') when the raid was conducted. Moreover, he submits that there is not even a whisper about the name of the applicant in the first three statements of the police witnesses namely; PW HC *Rajbir Singh*, PW Ct. *Wahid* and PW Ct. *Abad Khan* and it is only on 21.10.2001 that the name of the applicant for the first time surfaced in the 4th supplementary statements of the police witnesses which were recorded after 22 days of the registration of FIR. He further states that the police witnesses in the aforesaid statements claimed that they knew all the accused persons previously due to frequent encounters with them during their patrolling duties which is in teeth with the version of events recorded in the FIR, which otherwise records contrary i.e., that they came to know their names after their arrest.

Ld. counsel further contends that the arrest of the applicant is a case of mistaken identity as the person who has been named as an accused is one Haneef Sheikh S/o Habibur Rahman, R/o 151/C/9 Zakir Nagar, New Delhi, whereas the name of the applicant is Mohammad Hanif Mohammad Ishaque, S/o Mohammad Ishaque, R/o Bhusawal, Jalgaon, Maharashtra who was working as a teacher at Municipal Corporation School Jalgaon, Maharashtra since 11.03.2002. Thus, it is not a case of a mere typographical error but rather that of a different accused altogether as even the name of the father of the applicant does not match. To support this contention, reliance



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has been placed on identity proofs and employment certificates of the applicant.

In regard to the applicant being declared as a Proclaimed Offender on 07.03.2002, learned counsel for the applicant contends that instead of serving the notice of proclamation at the place where the applicant usually resides, the summons were served at the head office of SIMI, which had already been sealed by the police on 29.09.2001.

With respect to the offence under Section 153-A IPC, learned counsel submits that all citizens including the applicant have the right to express their opinions and in the present case there was no incitement to violence and thus the requirements of the Section 153-A were not met. Reliance has been placed by the ld. counsel for the applicant on Sunil Tyagi v. Govt of NCT of Delhi & Anr, reported as **2021 SCC OnLine Del 3597**, and Javed Ahmad Hajam v. State of Maharashtra, reported as **(2024) 4 SCC 156**.

3. *Per Contra*, learned APP for the State has vehemently opposed the bail application and contends that the applicant was an active member of SIMI and associated with it since 1998. The applicant was a part of the Editorial Board of 'Islamic Movement' Magazine published by SIMI. SIMI was banned by the Govt. of India on 27.09.2001, and on the intervening night of 27.09.2001 itself, on receipt of secret information regarding anti-national speeches being given at SIMI headquarters, a raid was conducted wherein 4 people were arrested, however, several other SIMI associates including the present applicant managed to escape. During the raid, many articles, magazines, literature and other media were seized which were



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inflammatory and highly provocative in nature. Applicant's name also figured in the seized magazine '*Islamic Movement*.' The name of the applicant also disclosed by the eyewitnesses, HC *Rajbir Singh*, Ct. *Wahid* and Ct. *Abad khan* of P.S. New Friends Colony which is evident from their statements under Section 161 Cr.P.C. as well as their Court depositions. His name was also disclosed by multiple co-accused namely *Noman Badar @ Falahi*, *Shahbaz Hussain*, *Safdar Hussain Nagori*, *Abdul Subham Qureshi* and *Abdulla Danish*.

He further submits that the applicant who was knowingly and deliberately avoiding his arrest was declared a Proclaimed Offender on 07.03.2002 and the said order declaring him as PO has not been challenged till date. Afterwards, raids were conducted all over India to apprehend him and he was finally arrested from Jalgaon, Maharashtra on 22.02.2024.

Learned APP, on instructions, states that the prosecution sanction required for section u/s 17 UAPA as it was applicable then, had already been obtained in 2001. He further states, that the supplementary chargesheet has been filed in the present matter on 24.04.2024 and that all the co-accused have been enlarged on bail. The Trial Court rejected the 2nd regular bail application of the applicant vide order dated 27.05.2024.

In respect of the identity of the applicant, it is submitted by the learned APP that during the house search of the applicant, a photocopy of an old Voter ID card of the applicant was recovered which was seemingly issued in 1995 and showed the name of the applicant as Sheikh Md. Haneef. The applicant got issued another Voter ID card in 2008 wherein his name was intentionally changed to Md. Haneef Ishaque. The learned APP further



submits that the CDR of the applicant reveals that he was in contact with the arrested co-accused *Shahid Badar* and *Saif Nachan* who are out on bail. Learned APP further submits that the applicant was also in touch with relatives of co-accused persons and persons accused in other UAPA cases who are involved in the 2006 Mumbai Local Train Blast case. Moreover, one of the co-accused in the present case, *Safdar Hussain Nagori* who is on bail in the current case was arrested in the 2008 Ahmedabad Blast case and is currently lodged in Bhopal Jail. Learned APP further submits that the de-sealing of the phone of the applicant has revealed is part of a WhatsApp group ‘*WAHDAT BHUSWAL*’ in which he has also sent multiple provocative messages which promote enmity between the religions.

4. I have heard learned counsel for the applicant as well as learned APP for the State and have also gone through the material placed on record.

5. The Supreme Court while discussing the import of Section 153-A and the test which is to be applied while interpreting the said Section in the case of Javed Ahmad Hajam v. State of Maharashtra, reported as (2024) 4 SCC 156 held as follows:-

“7. In Manzar Sayeed Khan [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417], while interpreting Section 153-A, in para 16, this Court held thus : (SCC p. 9)

“16. Section 153-AIPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public



tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-AIPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.”

(emphasis supplied)

8. This Court in *Manzar Sayeed Khan Manzar Sayeed Khan v. State of Maharashtra*, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417] referred to the view taken by Vivian Bose, J., as a Judge of the erstwhile Nagpur High Court in *Bhagwati Charan Shukla v. Provincial Govt.* [Bhagwati Charan Shukla v. Provincial Govt., 1946 SCC OnLine MP 5 : AIR 1947 Nag 1] A Division Bench of the High Court dealt with the offence of sedition under Section 124-AIPC and Section 4(1) of the Press (Emergency Powers) Act, 1931. The issue was whether a particular article in the press tends, directly or indirectly, to bring hatred or contempt to the Government established in law. This Court has approved this view in its decision in *Ramesh v. Union of India* [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] . In the said case, this Court dealt with the issue of applicability of Section 153-AIPC. In para 13, it was held thus : (Ramesh case [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] , SCC p. 676)

“13. ... the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. ... It is the standard of ordinary reasonable man or as they say in English



law ‘the man on the top of a Clapham omnibus’. (Bhagwati Charan Shukla case [Bhagwati Charan Shukla v. Provincial Govt., 1946 SCC OnLine MP 5 : AIR 1947 Nag 1] , SCC OnLine MP para 67)”

(emphasis supplied)

Therefore, the yardstick laid down by Vivian Bose, J., will have to be applied while judging the effect of the words, spoken or written, in the context of Section 153-IPC.”

To carve out an offence under Section 153-A IPC, there should be an intention to promote feelings of enmity or hatred between different classes of people, the prosecution needs to establish prima facie the existence of *mens rea* on part of the accused, and when dealing with a magazine or book, the same has to be judged by looking at the language of the book and reading it as a whole without relying on strongly worded or isolated passages. Moreover, the effect of the words must be judged from the standards of reasonable, strong-minded persons and not weak and vacillating minds.

6. On the aspect of the service of notice of proclamation being made on a place of ordinary residence, a Co-ordinate bench of this Court in Sunil Tyagi v. Govt of NCT of Delhi & Anr., reported as **2021 SCC OnLine Del 3597** held as under:-

“451. Publication by all three modes essential – Publication by all three modes namely (i) public reading in some conspicuous place of the town/village in such person ordinarily resides; (ii) affixation at some conspicuous part of the house or homestead and (iii) affixation at some conspicuous part of the court house are mandatory under Section 82(2) CrPC. The failure to comply with all the three modes of publication is to be considered invalid publication, according to law as the three sub-clauses



(a) to (c) are conjunctive and not disjunctive.

Thus, it is seen that failure to comply with even one of the three modes of publication would render the whole exercise futile.

7. The Supreme Court in the recent case of Jalaluddin Khan v. Union of India, reported as **2024 SCC OnLine SC 1945** while granting bail in a UAPA case has held as under:-

21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution.

8. Coming to the facts of the present case, as per the prosecution case, the Student Islamic Movement of India (SIMI) was declared as an unlawful organisation under the UAP Act by the Government of India vide Gazette notification dated 27.09.2001. On the intervening night of 27-28.09.2001, on the basis of secret information that SIMI office bearers were giving provocative speeches at their headquarters in Zakir Nagar, a raid was conducted in which four persons, namely *Shahid Badar, Irfan Ahmed, Md.*



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Khalid and *Saif Nachan*, were apprehended from the spot. In the FIR, there is no mention of the applicant either being present at the spot or of absconding from there. Moreover, three witnesses, namely *HC Rajbir Singh*, *Ct. Wahid* and *Ct. Abad khan* concededly did not mention the name of the applicant in their first three statements which were recorded on 28.09.2001, 29.09.2001 and 01.10.2001 respectively. It is in the 4th statement under Section 161 Cr.P.C. which was recorded on 21.10.2001 that the name of the present applicant first came up, i.e., 22 days after the FIR came to be registered. Moreover, while in the FIR and the first statement under Section 161 Cr.P.C. recorded on 28.09.2001, police witnesses say that they came to know the names of the accused after their arrest, in the 4th statement, the same police witnesses say that they had known the identity of the applicant and other co-accused because of their posting in that locality.

9. As far as the aspect of the applicant being declared a Proclaimed Offender vide order dated 07.03.2002 is concerned, a perusal of the said order would show that in his statement, the process server went to *151-C/9 Zakir Nagar* which used to be the Head Office of SIMI. He also states that the office does not belong to the applicant and the process remained unexecuted. A perusal of the 2nd statement of *HC Rajbir Singh* would show that the aforesaid place had already been sealed on 29.09.2001.

Though rival submissions are addressed on the aspect of the identity of the applicant, however, the same would be tested in trial and cannot be looked into at the stage of a bail application.

10. Lastly, the only accusation against the applicant qua the FIR seems to be that the applicant was on the editorial board and his name figures in the '*Islamic Movement*' magazine which was seized during their raid. As per



initial statements of police witnesses, no specific act of incitement has been pointed out qua the applicant which led to the registration of the original FIR. Further, the role of applicant was to help in the publication of their magazine and that too not in the capacity of an author, but rather as a proof-reader.

11. Considering the totality of the facts and circumstances and that the name of the applicant surfaced after 22 days of the registration of the FIR and further considering that the chargesheet has been filed and co-accused have been enlarged on bail, it is directed that the applicant be released on regular bail subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the concerned Jail Superintendent/concerned Court/Duty M.M. and subject to the following further conditions:-

- i) The applicant shall not leave India without prior permission of the concerned Court and surrender his passport, if any.
- ii) The applicant shall provide his mobile number to the Investigating Officer on which he will remain available during the pendency of the trial.
- iii) In case of change of residential address or contact details, the applicant shall promptly inform the same to the concerned Investigating Officer as well as to the concerned Court.
- iv) The applicant shall not directly/indirectly try to get in touch with the prosecution witnesses or tamper with the evidence.



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- v) The applicant shall regularly appear before the concerned Court during the pendency of the trial.
12. The bail application is disposed of in the above terms.
13. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.
14. Copy of the order be uploaded on the website forthwith.
15. Needless to state that this Court has not expressed any opinion on the merits of the case and has made the observations only with regard to present bail applicant and nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail application.

MANOJ KUMAR OHRI, J

SEPTEMBER 11, 2024

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