

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

**INTERIM APPLICATION NO. 1564 OF 2025
IN
CRIMINAL APPEAL NO. 1243 OF 2018**

Sayyed Aakif Sayyad Zafaruddin

Aged : 42 years, Occ. Nil,

Residing at : Lane No.5, Ganesh Colony,

VLP Road, Aurangabad,

Maharashtra

(Presently lodged at Ahemadabad

Central Prison)

... Applicant

Versus

The State of Maharashtra

Through ATS, Kala Chowki Police Station,

...Respondent

Mr. Mubin Solkar a/w. Adv. Tahir Hussain, Adv. Anas Shaikh,
Mrs. Mehrosh Solkar, Mr. Yakub Shaikh, Mr. Zahid Burud,
Adv. Hemal Shah i/b. Tahera Qureshi for the Applicant/Appellant.

Ms. Megha S. Bajoria, APP for the Respondent – State.

Mr. Asehana Kshirsagar, API and Mr. Panchal, HC, ATS, Kalachowki
Police Station, present.

**CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 27th APRIL, 2026

PRONOUNCED ON : 30th APRIL, 2026

ORDER : (PER : SHYAM C. CHANDAK, J.)

1. By this Application filed under Section 430 of the Bharatiya
Nagarik Suraksha Sanhita (BNSS), 2023, the Applicant seeks
suspension of his jail sentence and enlargement on bail, pending
the hearing and disposal of his aforesaid Appeal.

2. Heard Mr. Mubin Solkar, the learned counsel for the Applicant and Ms. Megha Bajoria, the learned APP for the Respondent – State.

3. By the Judgment and Order dated 28th July, 2016, passed by the learned Special Judge, under MCOC Act in MCOC Special Case No.16/2006 with MCOC Special Case No.18/2006, MCOC Special Case No.20/2007, MCOC Special Case No.8/2009 and MCOC Special Case No.20/2012, the Applicant was convicted for the offence under Sections 10(a), 13, 18, 20, 38, 39 of the Unlawful Activities (Prevention) Act and under Sections 18 and 20 of the UAPA. He was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.20,000/- in default to undergo simple imprisonment for one year. Additionally, he was also convicted under Section 120B of the IPC. However, in view of the sentence imposed for above offences, no separate sentence was awarded to him on this count.

4. The prosecution case is that, at the relevant time, the Anti Terrorism Squad was conducting enquiries in relation to the incidents of Nanded bomb blast case, explosives seized in Buldhana and the bomb blast which took place in Marathwada in the year 2002 and 2003. During the course of enquiry, the ATS gathered intelligence that some explosive and weapons were likely to be transported in a vehicle in the region. Acting on such information, on 09.05.2006 the teams of ATS were deputed along Manmad-Yevala-Aurangabad Road. At about 4 PM, at Yevala junction, on Yevala-Aurangabad Road, the team led by ACP

Shengal noticed one white colour Tata Sumo Jeep bearing registration No. MH-14-X-4380 coming from Manmad and going towards Aurangabad. ACP Shengal signaled that jeep driver to stop but, he sped away. The police team chased the jeep and intercepted it at Grishneshwar Temple, taluka Khultabad, Aurangabad. Three persons were found occupying the jeep viz. A-1 Mohd. Amer Shakil Ahmed Shaikh, A-2 Sayyed Juber Sayyad Anwar Kadri and A-4 Abdul Azim Abdul Jameel Shaikh. The police apprehended the A-1, but, the other two accused fled away. The police took A-1 alongwith that jeep to Khultabad Police Station. Search of the said jeep was carried out. 10 AK 47 rifles, 40 magazines, 2000 live cartridges, 10 magazine pouches and 30 Kgs of explosive substance were recovered from some boxes which were kept in the said jeep. Interrogation of A-1 revealed that his accomplices A-3 and A-22 were accompanying him in a TATA Indica car which was suspected to be carrying similar consignment. On complaint of ACP Shengal, FIR came to be registered as LAC No.3/2006 for the offence punishable under Sections 120B of IPC, 4 & 5 of the Explosive Substances Act 1908, under Sections 5, 6 and 9 (B) of the Indian Explosive Act 1884, under Sections 3 and 35 of the Arms Act, Sections 10, 13, 16, 18 and 23 of the UAPA and Sections 3 (1) (ii), 3 (2), 3 (4) of the MCOC Act 1999.

4.1 During investigation one Indica car was found abandoned at *Sayane* Road, Malegaon. The car was seized. The car was believed to be involved in this crime. On 13/05/2006, A-5, A-6, A-7 and A-8 were arrested. Their interrogation revealed the involvement of A-9. Thereafter, A-4, A-10 and A-22 came to be arrested. Further

investigation revealed the involvement of the Applicant in this crime. Therefore, the Applicant came to arrested on 19/05/2006. During custodial interrogation, the Applicant made a voluntary disclosure in the presence of the police and panchas. Further, the Applicant led the police and panchas to M/s. Vighnesh Infotech Cyber Cafe and there, the Applicant opened certain e-mail inboxes by entering the password and read the e-mail correspondence contained therein. The police took the print-outs of the email messages. The email dated 25.02.2006 had contained certain message in code-language about the bomb blast at Ahmedabad. The Applicant revealed that said code language was used to communicate with A-22 Sayyed Jabiuddin regarding the present crime. The Applicant revealed the meaning of the said email message and disclosed that said email was also sent to wanted accused Junaid, a Pakistan National. Additional e-mail correspondence was recovered by the police upon accessing three other email IDs through A-12 by visiting M/s. Vignesh Infotech. Investigation revealed that the Applicant was in contact with A-13 and A-14. It is alleged that, the Applicant and A-22 had been to Kathmandu together to meet the wanted accused Junaid and thereafter, the Applicant had allegedly provided his email to Junaid. On 11/05/2006, the Applicant had sent an email to the wanted accused Junaid to seek guidance after interception of the said Tata Sumo vehicle. On 15th June 2006 the Applicant made the confession about his involvement in the crime. Investigation revealed that, all the accused had conspired to commit '*Jihad*' by striking terror for which purpose they had procured and collected the said arms, ammunition and explosives, and transported the

same. Accordingly, charge-sheet was filed against 22 accused persons including the present Applicant.

5. Mr. Solkar, the learned counsel has submitted that it was not the case of the prosecution that the Applicant was a member of SIMI. The Applicant had no knowledge about transportation of the alleged arms, ammunition, explosive nor was he involved in the larger conspiracy allegedly hatched by the co-accuseds and the wanted accused. No overt act has been attributed to the Applicant about transportation of the arms and ammunition. There is no evidence to show that the accused persons wanted to assassinate the then Chief Minister of Gujarat Mr. Narendra Modi. The emails allegedly collected/recovered at the instance of the Applicant are not supported with the Certificate under Section 65B of the Evidence Act. The CDRs were also not supported with certificates under Section 65B of the Evidence Act. The confessions of A-1 and Applicant allegedly recorded by the police suffer from various loopholes and the same were retracted by them at the very first opportunity on being remanded to Judicial custody. Since the Applicant and A-1 have been acquitted for the offences of MCOC Act, their confessions are insignificant. Therefore, the conviction of the Applicant for the said offences is not sustainable in law.

5.1 Mr. Solkar has further submitted that the Applicant was arrested in this case on 19th May 2006 and since then, he has been in the jail. The Applicant was only 24 years of age at the time of his arrest. Now, he is aged 44 years. Till date, the Applicant has undergone 20 years of imprisonment. Thus, his prime youth has

been spent in jail. The Applicant has a clean record and he has not been convicted in any other case. The Applicant is not likely to abscond. Therefore, the Applicant is entitled for bail.

5.2 To support his submissions, Mr. Solkar, the learned Counsel for the Applicant has relied upon the following decisions :-

Saudan Singh v/s. State of Uttar Pradesh	2022 SCC Online SC 697
Suleman v/s. The State of Uttar Pradesh	(2022) 19 SCC 660
Dinesh @ Paul Daniel Khajekar v/s. The State of Maharashtra	Hon'ble Supreme Court Criminal Appeal No.2987/2023
Akash Vitthal Shinde v/s. The State of Maharashtra	I.A. No.3955 of 2023 in Criminal Appeal No.1186 of 2023
Dev Parmanand Chalwadi v/s. State of Maharashtra	I.A. No.2632 of 2023 in Criminal Appeal No.156 of 2017
Salman Salim Naje v/s. The State of Maharashtra and anr.	IA No. 1413 of 2025 in Criminal Appeal No.739 of 2019
Vernon v/s. The State of Maharashtra and anr.	2023 SCC OnLine SC 885
Yedala Subba Rao and another v/s. Union of India	(2023) 6 SCC 65
Dhan Singh v/s. Union of India	2019 SCC OnLine Bom 5721

6. Ms. Bajoria, the learned APP, on the other hand, has strongly opposed the Application by submitting that this case pertains to massive haul of arms, ammunition and explosive such as 16 AK-47 Rifles, 62 magazines, 3200 live cartridges and 43 kg of Explosive Substance (RDX) and other materials. Said arms and ammunition etc. were collected to strike terror as a revenge of *Godhra* incident.

6.1 Ms Bajoria submitted that, the Applicant was a member of the terrorist organization named SIMI and Lashkar-e-Toiba. The e-mail correspondence recovered at the instance of the Applicant

clearly indicate that the Applicant, the other accused persons and the wanted accused – Junaid had hatched a conspiracy to commit this crime. In this regard, PW-21, the panch witness to the recovery of the e-mails, has supported the prosecution case. The confessional statement of the Applicant and his co-accused revealed that the Applicant along with convicted A-22 and wanted accused – Faiyaz Kazi had gone to Kathmandu to meet the wanted accused – Junaid. The CDR of the mobile phone number used by the Applicant revealed that, during the relevant period, he was in contact with the convicted A-1, A-10 and A-22. She submitted that the seized arms and ammunition were arranged with the aid of the wanted accused Junaid and others. Since beginning, the Applicant was involved with his co-accused to procure the arms and ammunition. This fact is evident from the e-mails that Applicant had sent after seizure of the arms etc. PW-28, the owner of the Cyber Cafe and PW-38, who was working there at the relevant time, have corroborated the confession of the Applicant. She submitted that, the offence is serious and the Applicant would have to undergo 40 years of imprisonment for the same. Presently, the Applicant has undergone only 20 years of the sentence. The case against the co-accused is distinct to the case against the Applicant. As such, the ground of parity is not available to the Applicant. Therefore, having regard to the scope of the Section 430 BNSS, the Applicant is not entitled for bail.

7. We have carefully considered these submissions and perused the record. Record indicates that, the Applicant was convicted

primarily on the basis of the e-mail correspondence, his confession and the confession of the A-1.

7.1 In so far as the e-mail correspondence is concerned, it is the prosecution case that certain e-mail was sent by the Applicant after carrying out a bomb blast at Ahmedabad, in which about 25-50 persons were injured. However, this e-mail message is not directly connected with the transportation of the subject arms, ammunition and the explosive. Mr. Solkar has categorically submitted that, the Applicant has been acquitted in the case of the bomb blast at Ahmedabad. He submitted that, no Certificate issued under Section 65B of the Evidence Act was produced to support the recovery of the e-mail correspondence. This fact is not controverted by the Respondent in their say. Therefore, how the said e-mails were proved is required to be re-examined.

7.2 There is no material to show that the Applicant was directly or indirectly involved in the procurement and transportation of the subject arms, ammunition and the explosive. As alleged, the Applicant had made his confession between 13th to 15th June, 2006. Mr. Solkar has submitted that, immediately, on 16th June the Applicant had retracted his confession. The confession does not indicate that the Applicant was aware as to when, how and where the subject arms, ammunition and the explosive would be transported and delivered to strike terror as per the larger conspiracy. Except the said e-mails, there is no other evidence corroborating the confession of the Applicant. The Applicant was acquitted for the offence under Section 3 (2), 3 (1) (ii) and 3 (4)

of the MCOC Act. He was also acquitted of the offences under Sections 16 and 23 of the UAPA and Section 25 (1A), 25 (1AA), 25 (1B) (a), 26 r/w Section 7 and 27 of the Arms Act and Section 4 (b) (ii) and 5 (b) and 6 of the Explosive Substances Act and Section 9B(a) (b) of the Explosive Act.

7.3 In the above circumstances, it appears that only because the Applicant had met the wanted accused Junaid, it was inferred that he wanted to join *Jihad* and he was in contact with the co-accused. However, that by itself may not be sufficient to indicate readiness or willingness on the part of the Applicant to play a major role in *Jihad* which was to be carried out with the help of the seized arms and ammunition. We are also of the *prima facie* opinion that there is no reliable evidence to implicate the Applicant on the above count. However, the said aspects of the matter would call for more detailed scrutiny based on the evaluation of the evidence, which will be possible only during the final hearing of the Appeal.

7.4 Having regard to the evidence on record, based on which, the Original Accused Nos.10, 14 and 19 were convicted and considering the fact that those accused persons have already been released on bail by this Court during the pendency of the Appeal filed against their conviction, hence, by applying the principle of parity, we do not find any justifiable ground to take a different view in the matter when it comes to the question of releasing present Applicant on bail. Rather, we are of the opinion that on the ground of parity, the Applicant would also be entitled to an order releasing him on bail from this Court.

7.5 At the time of his arrest, the Applicant was aged 24 years. The Applicant has been in jail for last 20 years. He has already undergone half of the maximum sentence period of 40 years. The Appeal is not likely to be heard any time soon. The Applicant is not convicted in any other case. He is not likely to abscond.

7.6 In view thereof, we are inclined to allow this Application. Hence, following Order is passed :-

(i) The Applicant - Sayyed Aakif Sayyad Zafaruddin be enlarged on bail on furnishing P.R. Bond in the sum of Rs.2,00,000/- with two local solvent sureties in the like amount.

(ii) The Applicant shall report to the trial Court, once in a month between 1st and 5th day of calendar month between 10:00 a.m. to 02:00 p.m., till his appeal is finally disposed of.

(iii) The Applicant shall attend the office of the ATS, Kala Chowky police station, Mumbai once in a month between 1st and 5th day of the calendar month between 10:00 a.m. to 02:00 p.m. till his appeal is finally disposed of.

(iv) The Applicant shall not leave the jurisdiction of the trial Court without prior permission of the Court.

(v) The Applicant shall surrender his passport, if having or in his possession, before the trial Court, before his release from Jail.

(vi) If there are two consecutive defaults in appearing before the trial Court/office of the ATS, the

learned Judge/ATS shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of this bail.

(vii) Before his release from jail, the Applicant shall keep the trial Court and ATS, Mumbai informed of his current address and mobile contact number as to where he would stay till the appeal is finally disposed of.

(viii) The Applicant shall not change his residential address & contact No. without prior permission of the trial Court.

8. The Interim Application stands disposed of.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)

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PREETI HEERO
JAYANI
Date: 2026.04.30
16:13:25 +0530