



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 883 OF 2023

Razi Ahmed Khan

.....Appellant
(Org. Accused No.3)

Vs.

The State of Maharashtra
(Through ATS Wing, Kala Chowki)

.....Respondent

Mr. Ashok Mundargi, Senior Counsel i/b Adv. Pravada Raut for Appellant.
Mrs. Ashvini A. Takalkar, A.P.P., for the Respondent-State.

**WITH
CRIMINAL APPEAL NO. 1151 OF 2023**

Kayyum Abdul Shaikh

.....Appellant
(Org. Accused No.2)

Vs.

The State Of Maharashtra
High Court, Bombay for
Kalachowki Police Station

... Respondent

Mr. Mihir Desai, Senior Counsel a/w Mr. Hasnain Kazi, Ms. Shraddha Vavhal, Saipan Shaikh, Mr. Hafizuddin Kazi, Zeeshan Khan, Athar Qureshi and Mr. Raeed Kazi for Appellant.

Mrs. Ashwini A. Takalkar, A.P.P for the Respondent-State.

WITH

CRIMINAL APPEAL NO. 206 OF 2024

Unais Umar Khaiyyam Patel

.....Appellant
(Org. Accused No.6)

Vs.

- 1) The Anti-Terrorism Squad,
Kala Chowki, Mumbai,
- 2) The State of Maharashtra,
Through the Public Prosecutor,
High Court, Bombay.

.....Respondents

Mr. Hasnain Kazi a/w Ms. Shraddha Vavhal, Saipan Shaikh, Mr. Hafizuddin Kazi, Zeeshan Khan, Athar Qureshi and Mr. Raeed Khan for Appellant.

Mrs. Ashwini A.Takalkar, A.P.P, for Respondent No.2-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 10th MAY, 2024

PRONOUNCED ON : 11th JUNE, 2024.

JUDGMENT (PER- A.S. GADKARI, J.):-

1) All the above mentioned Appeals are being decided together by this common Judgment, as they arise from same Crime Number, same set of facts and also involve common questions of law.

1.1) The common thread in all these Appeals is a prayer for bail under Section 439 of the Criminal Procedure Code (for short, "*Cr.PC.*") in Special Sessions Case No.24 of 2023, pending on the file of learned Special Judge, Nashik, arising out of C.R. No.20 of 2021, registered with Anti-Terrorist Squad Police Station, Kalachowki, Mumbai, under Sections 121-A, 153-A, 120-B, 109, 116, 201 of the Indian Penal Code (for short, '*I.P.C.*') and under Section 13(1)(b) of the Unlawful Activities (Prevention) Act, 1967, (for short, "*the UAP Act*").

1.2) The Appellants are original Accused Nos.3, 2 and 6 respectively as per the charge-sheet in the said crime. For the sake of brevity, the Appellants hereinafter will be referred to as per their original status in the charge-sheet i.e. Accused Nos.3, 2 and 6.

2) The Appellant, Accused No.3 has impugned Order dated 13th April, 2023 passed below Exh-1 in Criminal Bail Application No.324 of 2023, by the learned Special Judge, Nashik, rejecting his Application for bail.

- 2.1) The Appellant, Accused No.2 has impugned Order dated 24th August, 2023 passed below Exh-6 in Special (ATS) Case No.24 of 2023, by the learned Special Judge, Nashik, rejecting his Application for bail.
- 2.2) The Appellant, Accused No.6 has impugned Order dated 10th November, 2023 passed below Exh-11 in Special (ATS) Case No.24 of 2023, by the learned Special Judge, Nashik, rejecting his Application for bail.
- 3) Heard Mr. Mundargi, learned senior counsel for Appellant in Criminal Appeal No.883 of 2023, Mr. Desai, learned senior counsel for Appellant in Criminal Appeal No.1151 of 2023, Mr. Kazi, learned Advocate for Appellant in Criminal Appeal No.206 of 2024 and Mrs. Takalkar, learned A.P.P. for Respondent-State in all Appeals. Perused entire record produced before us and Affidavits-in-Reply filed by the Investigating Officers dated 24th November, 2023, 17th January, 2024 and 19th March, 2024 respectively.
- 4) Record reveals that, the first information report herein is filed by Shri. Gurudev G. Kale, Assistant Police Inspector, A.T.S., Nashik on 22nd September, 2022. It is the prosecution case that, on 14th June, 2022 between 6.15 p.m. to 7.15 p.m., an inaugural ceremony of the new office of the Popular Front of India (PFI) situated in front of Jameatus Swalehat Madarsa, Tension Chowk, Azad Nagar, Malegaon took place. At the said occasion, the Accused No.1 and other 15 to 20 persons were present. After the opening ceremony of the said office was over, a secrete meeting of the members of PFI was convened. In the said meeting, the Accused No.1 and

other persons highlighted various atrocities being committed against the Muslim Community in Indian, including the incidents of mob-lynching. It was emphasized therein that, the need of unity of Muslim Community to wage a war against the country by adopting any mode. The Accused No.1 was the head of PFI, Malegaon and instigated the persons present in the said meeting to motivate people from Muslim Community with similar thinking, to enhance communication with like minded persons from the Community to create atmosphere against the Government of India and flared the emotions of people from Muslim Community. He also issued a 'Fatwa' and told to kill any person who would speak against the Muslim religion. He and other Accused instigated the Muslim Community to have hatred against the people of other religions so as to cause disturbance in the country. Accused No.1 also instigated Accused Nos.2 to 5 prompting them to enhance communication with people from their community to inspire them to wage a war in the State of Maharashtra and against the Government of India. The Accused No.1 attracts youngsters having extremist ideology from Muslim Community and is brainwashing them to wipe out their identity as Indians and to become radical Muslims and to impose Sharia Law in India in due course of time. The aim of the accused persons is to foster hatred towards other religion and Government of India and to create division amongst Indian creating problem with the unity and integrity of India. The Accused persons have thus indulged into the

conspiracy to do the said acts against the Government of India. The Accused persons have also held various meetings to create hatred in the mind of people from Muslim community and to instigate them to wage war against the Government of India. The Accused No.1 and other Accused persons thus, conspired to wage war against the country. In this brief premise, present crime is registered.

4.1) As noted earlier, the Bail Applications preferred by the Appellants under Section 439 of Cr.P.C. have been turned down by the trial Court by its impugned Orders.

5) Mr. Mundargi, learned senior counsel submitted that, in the present case FIR is registered on 22nd September, 2022 and the Appellant and the Accused No.3 was arrested on the same day. That, the ban on PFI is imposed on 28th September, 2022. He submitted that, for application of Section 13(1)(b) the act as contemplated under Section 2(o) i.e. 'unlawful activity' must have been committed by the Accused. The said activity must fall in any of the three categories of Section 2(o). That, merely spreading hatred in two groups will not cause cession of a part of territory of India. He submitted that, commenting on political or social system will not be enough to attract Section 2(o) of the UAP Act. That, the Appellant has not been charged with advocating unlawful activity. He did not forward the messages received to him and those messages remained in the handset of his mobile phone only. He submitted that, therefore at the most an act

under Section 153-A will apply and not an act under Section 121-A of IPC will be attracted. He submitted that, the Appellant is in jail for last more than one and half years out of the total sentence prescribed under Section 153-A of IPC and therefore he may be granted bail.

6) Mr. Desai, learned senior counsel appearing for the Accused No.2 submitted that, the images and messages found on the mobile phone of the Appellant are not created or circulated by him. He has only received it from other persons and has retained it. He submitted that, all kinds of provocation and incitement are dealt with by different Sections of Indian Penal Code e.g. Section 153-A. That, if the prejudice to national integration is caused, then Section 153-B will be applied and thereafter Section 295-A, but certainly not Section 121-A of IPC. He submitted that, the allegations against the Appellant that, they conspired to overawe by means of criminal force, the State Government or Central Government are baseless. That, incitement for animosity in two groups or religions would fall under Section 153-A and not under Section 121-A of IPC. He submitted that, the allegations against a particular religion of somebody or a class of persons would attract Section 295-A. That, the allegations against the Accused No.2 at the most attracts Section 153-A and/or 153-B. He submitted that, the prosecution has erroneously relied on a punchanama (Page 391 to Appeal) which is recovered in different crime. He submitted that, even if the said document i.e. Vision-2047 document is accepted or subscribed by

the Appellant, then also it is preposterous. That, conspiracy to achieve the object of the year 2047 is too distant and too far. It is even not at the stage of preparation and therefore whether it amounts to waging war against the Country or to overthrow the Government as contemplated under Section 121-A of IPC would be a question to be decided at the time of trial. He submitted that, till an Accused incites people to achieve the goal, it will not be an offence. There is no act of omission or commission at the behest of Accused No.2 to further the Vision document-2047. He submitted that, the individual act of the Appellant cannot be considered as conspiracy to commit an offence, unless it is a conspiracy for waging war or overthrowing the Government. That, mere conspiracy will not fit in the provision of Section 121-A. In support of his various submissions he relied on the decisions of the Hon'ble Supreme Court namely, (i) *Mohd. Jamiludin Nasir Vs. State of West Bengal* reported in (2014) 7 SCC 443; (ii) *Mohammad Irfan Vs. State of Karnataka*, reported in 2022 SCC OnLine SC 856; (iii) *Javed Ahmad Hajam Vs. State of Maharashtra & Anr.* reported in 2024 SCC OnLine SC 249; (iv) *Sunaina Holey Vs. State of Maharashtra & Ors.* reported in 2021 SCC OnLine Bom 1127 : (2021) 2 AIR Bom R (Cri) 674 and; (v) *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & Anr.* reported in (2005) 5 SCC 294.

He submitted that, the Accused No.2 is behind bars in the present crime for last about one and half years and therefore he may be

released on bail by setting aside the impugned Order.

7) Mr. Kazi, learned Advocate appearing for the Accused No.6 submitted that, the said Accused is B.Sc. in Computer Science and is an expert in computers and mobile phones. He submitted that, on the basis of an anonymous letter received by the Investigating Agency, it further investigated the crime and subsequently arrested the Appellant. He submitted that, cleaning the phones to wipe out the data of other persons or even co-accused would attract Section 201 of IPC only and certainly not Section 121-A of IPC. That, the alleged deleted material so also the concerned phones are not seized by the police. He submitted that, there is no material on record to show that, the said alleged phones were used in any offence/s by other persons/co-accused. He submitted that, even if it is accepted that the Appellant is liable to be charged under Section 201 of IPC, it is a bailable offence. He submitted that, the tweets which are found on the mobile phone of the Appellant are not for inciting the people or any community and those tweets were for venting out his views towards Babri Masjid, only for a day. He submitted that, the document mentioned on page No.699 of Appeal and recovered from the Gmail account of the Appellant, will not attract Section 121-A of IPC, as there is nothing incriminating against him. He submitted that, from the statement of witness (page 344) it cannot be inferred that, the Appellant was inciting the people to take part in waging war against the country. That, from the said

statement it can only be inferred that, the Appellant is a Karate teacher. That, the Appellant was not present at the meeting on 14.6.2022 at Malegaon or in any other meeting of PFI. He submitted that, there is no evidence of destruction of evidence from the mobile or computers by the Appellant and assuming if it is there, then also Section 201 of IPC will apply. That, under Section 201 of IPC the maximum punishment is up to 3 years and therefore Appellant may be granted bail by setting aside the impugned Order.

8) Mrs. Takalkar, learned APP appearing for the State painstakingly and meticulously pointed out entire material/evidence found during the investigation of present crime against the Appellants. She also drew our attention to the aforementioned Affidavits-in-Reply filed by the concerned Officers in opposition to the Appeals. She submitted that, Appellants were/are part of the group and in particular PFI. There are statements of witnesses to support the same. That, the activities of Appellants are prejudicial to the interest of nation. She submitted that, the original document of Vision-2047 is in Urdu Language. That, its translation is annexed at page No.1269 of Appeal No.883 of 2023. Perusal of the said document indicates that, it is the intention of PFI and its members to transform India into an Islamic State by 2047. She pointed out the chart/diagram of CDR of the Accused persons herein and other Accused persons in present crime and other crimes. She submitted that, the Accused

No.2 used to teach Karate to the people/boys with like minded ideology. That, the CDR transcript of conversation between Accused No.2 and Accused No.6 shows that, the Appellants had formed a WhatsApp group namely creative minds and the Accused No.6 was instrumental in cleaning the objectionable data from the mobile handsets of the members of PFI. She on instructions submitted that, PFI was an organization of like minded people who came together to conspire to commit an offence under Section 121-A and 151-A of IPC. That, the Appellants had conspired to create rift in two communities. The Accused No.2 forwarded audio video clips to the other members of PFI for getting momentum and to create an opinion in the minds of people of a particular community against the Government of India. She submitted that, all the material on record is incriminating against the Appellants, denoting that all the like minded people including Appellants have associated to conspire to topple the Government by false claims and instigating other people to do so and therefore Section 121-A and 153-A of the IPC are properly applied to the present crime. In support of her contentions, she relied on the decisions of the Hon'ble Supreme Court and this Court, namely (i) *Mohammad Irfan Vs. State of Karnataka (Supra)*; (ii) *Romesh Thappar Vs. The State of Madras* reported in AIR 1950 SC 124 and; (iii) *Gopal Vinayak Godse Vs. The Union of India & Ors.* reported in 1971 Bombay 56 : 72 Bom LR 871.

9) At the outset it may be noted that, the Appellants have been

charged with Section 13(1)(b) of UAP Act which forms part of Chapter III of the said Act and therefore the rigors of Section 43-D(5) of the said Act are not applicable to it. Even otherwise, the maximum sentence prescribed under the said Section may extent to seven years with fine.

10) Record of investigation indicates that, the Appellants in connivance with other Accused persons conspired to overawe the Government by use of criminal force. The first information report is self-eloquent. There is more than sufficient material available on record in the form of statements of witnesses and the documents seized from the electronic devices of the Accused persons that, they indulged into activity of inciting like minded people to join them to overawe the Government by use of criminal force. They also conspired to transform India into an Islamic country by 2047. They are not only propagators but actively intending to implement the Vision-2047 document of their organization.

11) There are statements of more than 20 witnesses, multiple conversations between members of the Association *inter-se* and overwhelming electronic evidence to demonstrate that, the Appellants in connivance with other accused persons have systematically undertaken activities which are detrimental to the interest and integrity of the nation. There is more than sufficient material available on record to *prima facie* show the involvement of the Appellants in the present crime to apply Section 121-A of the IPC. The evidence alleged against the Appellants is

serious in nature. Even if no overt act or violations has been carried out till today, the material on record clearly indicates that *prima facie* evidence of conspiracy to commit offence/s punishable under Section 121 of the IPC is made out. Section 121-A of IPC also encapsulates within it even planning to wage war against the State. The evidence on record discloses that, the Appellants have participated in spreading hatred against the State, spread anti national agenda through various means of propaganda including use of electronic media by creating WhatsApp groups and circulating messages detrimental to the interest of the nation. It is also revealed that, the Appellants shared a document by name Vision-2047. The said document is basically propounded by the PFI which the Appellants are professing.

12) Section 121-A states that, whoever within or without (India) conspires to commit any of the offences punishable under Section 121, or conspires to overawe by means of criminal force or the show of criminal force, the Central Government or the State Government shall be punished with imprisonment for life or with imprisonment of either description which may extent to 10 years, and shall also be liable to fine.

13) Perusal of material/evidence on record clearly indicates that, the Appellants entered into a wide spread conspiracy to give ultimate effect to the Vision-2047 document. The roles of Appellants are interconnected and inseparable as far as the allegation of conspiracy under Section 121-A of IPC is concerned. Perusal of Vision-2047 document indicates that, it is a

sinister plot and design to transform India into an Islamic State by adopting all possible methods mentioned therein. It is a conspiracy to commit horrendous acts perpetrated by the Appellants pursuant to their conspiracy, amounts to conspire to overawe or to attempt to wage war against the Government of India.

13.1) As far as the contention of the learned counsel appearing for the Accused No.2 that the conspiracy to achieve the object of Vision-2047 is to distant and to far is concerned, taking into consideration the tropical and geographical vastness of India, to bring the said act in reality it may take that much period, may be the calculation of the Accused persons and therefore it may be the reason that they have termed their document as “Vision-2047”.

13.2) In the case of *State of Maharashtra & Ors. Vs. Som Nath Thapa & Ors.*, (1996) 4 S.C.C. 659, the Apex Court has held that, it is not necessary that each of the conspirators must know what the other conspirators will do. Therefore according to us, what the accused No.1 was doing or intending to do, need not be known to the Accused No.6 because all of them formed a chain and have joined together to conspire to do a specific act.

13.3) The Investigating Officer in his Affidavit dated 17.1.2024 has stated that, the Appellants were continuously in contract with each other. Basically PFI is a cadre based organization and each cadre is entrusted with

special duty and responsibility. That, the Appellants herein have been given specific specialised duties to further the conspiracy.

14) There is more than sufficient evidence on record to corroborate the allegations against the Appellants. The allegations against the Appellants are well founded and cannot be brushed aside or ignored. After taking into consideration the entire material available on record, we are of the opinion that, a strong *prima facie* case is made out to indict the Appellants in the present crime. If the Appellants are released on bail, there is every possibility that, they may tamper with the evidence at this crucial stage.

14.1) We find that, the trial Court has not committed any error in passing the impugned Orders. There are no merits in the Appeals and are accordingly dismissed.

15) As we have dismissed the Appeals of the Appellants for releasing them on bail, we request the learned Judge of the trial Court to make an endeavour to dispose off the said Special (ATS) Case No.24 of 2023, within a period of one year from the date of receipt of present Judgment.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

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