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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 07.10.2020

Pronounced on: 23.10.2020

+ BAIL APPLN. 2725/2020

FAIZAN KHAN

..... Petitioner

Through

Mr. Salman Khurshid, Sr. Adv. with
Ms. Azra Rehman, Mr. Aadil Singh
Boparai and Ms. Ragini Nayak, Adv.

Versus

STATE NCT OF DELHI

..... Respondent

Through

Mr. S. V. Raju, ASG with Mr. Amit
Mahajan, Mr. Rajat Nair, SPPs with
Mr. Shantnu Sharma, Mr. A.
Venkatesh, Mr. Guntur Pramod
Kumar, Mr. Dhruv Pandey, Ms.
Sairica Raju and Mr. Shaurya R Rai,
Adv.
SI Vinod Kumar

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Present petition has been filed under section 439 Cr.P.C. seeking regular bail in pursuance to FIR No.59/2020 registered at Police Station Crime Branch, investigated by the Special Cell, New Delhi for the offences punishable under section 147/148/149/120B IPC.

2. To oppose the present petition, the State has filed the status report stating therein that on 06.03.2020, source information was received in the Crime Branch that the communal riot incidents of February 23-25, 2020 in Delhi were pre-planned and the same were hatched by one Umar Khalid, a student of Jawahar Lal University (JNU) and his associates and that all linked with different-2 groups. As per pre-planned conspiracy, the accused Umar Khalid gave provocation speeches at various places and appealed to minority gathering to block roads and other public places during the visit of Mr. Donald Trump, Hon'ble President of USA on February 24/25, 2020, so that a propaganda may be flashed at international platform that the Minorities in India are being tortured. To achieve this objective, firearms, inflammable substances, petrol bombs, acid bottles, stones, sling shots and other dangerous articles were gathered at various places including Maujpur, Jafarabad, Chand Bagh, Gokulpuri and Shiv Vihar, Delhi. In order to achieve target, initially Jamia students along with locals & others started riots in the garb of anti-CAA protest which was passed by the Parliament in December 2020.

3. Thereafter, a Jamia Coordination Committee (JCC) was formed, which included various groups & organizations, and with a pre-planned and

predetermined strategy, protests against CAA started at various sites in Delhi. The said protest leads to various intermittent violent activities at various places of NCT of Delhi. The said pre-planned protests finally ended with riots incidents at the various places in the Trans Yamuna area mainly in North East Delhi area between February 24/25, 2020.

4. On 15.03.2020, on the basis of facts revealed during investigation, sections 302/307/124A/153A/186/353/395/427/435/436/452/454/109/114 read with 120B IPC & sections 3 and 4 of Prevention of Damage of Public Property Act 1984 & sections 25/27 Arms Act were added in present case. Thereafter, on 19.04.2020, on the basis of facts revealed during investigation, section 13/16/17/18 of Unlawful Activities (Prevention) Act were added in present case. Further, Section 341 IPC was also added on 04.06.2020, Section 201 IPC was added on 26.07.2020 and Sections 420/468/471 IPC were added on 29.07.2020.

5. On February 23, 2020, as per pre-planned conspiracy, the children and ladies were sent to block Jafarabad metro station. The systematic blockade of multiple protest sites in North-East District of Delhi was followed by engineered riots. These riots have resulted in death of about 53 persons and injuries to hundreds of innocent citizens and huge loss of Govt.

and private properties. The evidence collected so far clearly shows that the present accused i.e. Faizan Khan and co-accused Asif Iqbal Tanha while acting in connivance with each other, as part of one conspiracy, and acting as an alter ego of each other, in furtherance of a pre-conceived criminal conspiracy hatched with other co-accused knowingly facilitated the commissioning of unlawful and terrorist act, which was executed by the other co-accused. The said evidence also more than prima-facie shows that the accused and his associate i.e. Asif Iqbal Tanha were actively involved in executing the preparatory work for commission of the unlawful and terrorist act executed by the other accused.

6. The investigation against the accused started recently when positive leads against the accused emerged. The investigating agency received the CERT-IN report on 23.04.2020. This led to the analysis of the mobile no 9205448022 which had cropped in the whatsapp Chats which was being used in the name of “*Jamia Coordination Committee (JCC)*”. On 29.04.2020 the CAF form of mobile number 925448022 was sought from service provider through official email and was granted on the said date; which revealed that the mobile number was obtained in the name of Abdul Jabbar. On 22.06.2020 Statement of Abdul Jabbar (whose Adar card was used to

obtain the SIM) was recorded u/s 161 Cr.P.C. Other CERT-IN report was received by the Investigating Agency on 26.06.2020 then, on 13.07.2020 protected witness was examined and it was revealed that mobile no 9205448022 was being used by media team of JCC headed by accused Safoora Zargar. Thereafter, further investigation revealed that the mobile number of the accused was used to generate OTP for activating the SIM and different live photo was used in CAF from the identity document submitted to obtain the said number. This led to identification of the accused/petitioner as suspect and thereafter he was arrested on 29.07.2020.

7. During course of investigation, the mobile phones of the arrested accused persons were sent to CERT-IN for analysis. As per the investigations, it has emerged that the present conspiracy was planned and executed by extensively using whatsapp groups for coordination between the various co-accused and other likeminded persons. Report of CERT-IN revealed that different whatsapp groups were formed for Coordination and passing directions regarding mobilisation of people at locations of CAA protest sites which led to riots. During the investigation of the mobile phones it was revealed that Mobile No. 9205448022 was highly active. The said number was declared as official number of “*Jamia Coordination*

Committee (JCC)” and was active in all whatsapp group of JCC i.e. “*Jamia Coordination Committee*”, “*JCC JMI Official*”, “*JCC_JMI*” and “*JMP*”. There were “*four whatsapp groups*” which were formed for Co-ordination and passing directions regarding mobilisation of people at locations of CAA protest sites which led to riots. During investigation of the said number, it was further found that the digital Customer Application Form (CAF) mobile number 9205448022 received by the service provider had a different live photo on the CAF from the identity document submitted to obtain the said number i.e. Aadhar card. The identity document i.e. Aadhar card was found in the name of Abdul Jabbar s/o Gulam Rasool r/o M-61, Gaffar Manzil, Part II, Haji Colony, Jamia Nagar, Delhi. Further, investigations also revealed that the said number was issued from “*Golden Communications*” located at B-19/20, Okhla Vihar, Main road, Okhla, Delhi. During the investigations the registered subscriber i.e. Abdul Jabbar was traced and examined. He stated that he did not purchase any SIM card bearing SIM number 9205448022 and someone fraudulently used his identity document to procure the said SIM card.

8. Thereafter further investigation was undertaken in the matter and it was found that Mobile SIM Card No. 9205448022 was activated by the

accused person Faizan Khan, while working as the authorized Airtel representative at the Golden Communication. He was the person who filled up digital Customer Application Form (CAF) of Mobile SIM card no. 9205448022. He had given his mobile number 9911155235 for receiving the One Time Password (OTP) for activating the SIM card number 9205448022.

9. On the basis of the aforesaid facts that the SIM 9205448022 used in the name of “*Jamia Coordination Committee*” was activated by the accused Faizan Khan by giving his mobile number 9911155235 for receiving the One Time Password (OTP) for activating the SIM card 9205448022, the petitioner was arrested on 29.07.2020.

10. During interrogation Faizan Khan disclosed that he was working as a promoter of Airtel Company at a shop under the name of “*Golden Communication*” for the last one and half years. One of the students of Jamia University namely Asif Iqbal Tanha visited the shop and had demanded a SIM card on a fake ID. He activated the SIM Card No.9205448022 on using ID of Abdul Jabbar with the live photograph of one Gaurav Kumar Diwakar, working as a JIO Promoter in the said shop.

11. Thereafter, the witness Gaurav Kumar Diwakar was examined and his

statement was recorded on 11.08.2020 and he stated that accused Faizan took his live photograph on the CAF for activating mobile number 9205448022. The witness Gaurav Kumar Diwakar stated that the accused Asif Iqbal Tanha who is one of the main accused of the present case, had come to the mobile shop and had been demanding a fake SIM Card from the petitioner for using the same in the protests against CAA. He also stated that accused Faizan Khan told him that SIM Card on fake ID is very essential as the same was to be delivered to Asif Iqbal Tanha, who was fighting for his “QUOM” (Community).

12. As such, after gathering sufficient evidence that petitioner with preconceived mind knowingly, deliberately and intentionally activated the above said SIM card on forged and fabricated documents in furtherance of a conspiracy to commit, advocates, abet, facilitate the commission of, a Terrorist Act and in furtherance to the preparatory steps to the commission of a Terrorist Act. From the statement of witnesses and evidences collected so far, sections 13/16/17/18 U.A.(P)Act, r/w120B/302/307/124A/153A/186/353/95/427/435/436/452/454/109/114/147/148/149/341/420/468/471/201 IPC & sections 3/4 Prevention of Damage of Public Property Act 1984 & 25/27 Arms Act, were also added against petitioner in the present case.

13. During further investigation statement of protected witness ROBOT was recorded u/s 161 Cr.P.C. and 164 Cr.P.C., who stated that Asif Iqbal Tanha had come to the shop in his presence, he was asking for a SIM card on fake ID from petitioner, as the same is required for anti-CAA Protests and after protest they will resort to riots. He stated that Asif Iqbal Tanha also told that fake SIM card will help them in concealing their identity.

14. The co-accused Asif Iqbal Tanha was also part of the other groups/associations which were formed to plan and instigate unlawful and terrorist activities. He actively participated in the anti CAA/NRC protests which were planned as a part of conspiracy specifically at Jamia University and other protest sites.

15. Mr.S.V. Raju, learned ASG argued that the evidence shows that the petitioner in furtherance of the criminal conspiracy with co-accused Asif Iqbal Tanha, one of the main conspirators, deliberately issued the SIM card no 9205448022. Since inception petitioner was well aware about the conspiracy of riots. Said SIM Card was further used to managed the various sites and to mobilise the Muslim people of area on the protest sites which further led to Chakka Jaam and riots in various protest site in Delhi.

16. Learned ASG further submitted that in the present case, chargesheet has been filed against 15 accused on 16.09.2020, however, none of the accused has been released on bail except accused Safoora Zargar on the humanitarian ground by this Court. Investigation against six accused, including petitioner herein is pending. Out of these 6 accused, three have been released on bail.

17. Further submitted that from the statements recorded under section 161 Cr.P.C. and 164 Cr.P.C., it is revealed that there was a deep rooted conspiracy to disrupt the normal activity in Delhi and activity was systematically carried out with certain individuals who were specialised in camouflaging violent protests as seemingly non-violent protests. In view of the evidences gathered by the investigating agency read with the presumption of commissioning of offence as provided under section 14-E of UAPA, there exist no ground to grant bail to the petitioner.

18. Mr.Salman Khushid, learned senior advocate appearing on behalf of the petitioner submitted that the investigating agency has misapplied and wrongly invoked the Unlawful Activities Prevention Act, 1967 against the present petitioner. There is neither any allegation that the petitioner indulged in any terrorist act nor is there any material that even remotely shows that

the petitioner funded any terror activity. The invocation of the UAPA, 1967 vis-à-vis the petitioner is a gross abuse by the investigating agency to deprive the petitioner of his personal liberty.

19. Further submitted, there is no material whatsoever to demonstrate that the petitioner had the requisite intention or was party to any terror activity. The sole allegation against the petitioner is that he facilitated a SIM card on fictitious documents in exchange for some extra money. It is alleged that the said SIM card was consequently provided by a student (purchaser) to the Jamia coordination committee in order to coordinate protests against the Citizenship Amendment Act, 2019.

20. Mr.Salman submitted that it is the case of the investigation agency that the said SIM card was allegedly provided by the petitioner on the allurement of money but not on account of any other consideration/objective. Therefore, the invocation of the UAPA, 1967 is disproportionate and there is no material to satisfy the basic ingredients provided under the UAPA, 1967. It is an admitted fact that the petitioner was neither present in north-east Delhi during the protests/ensuing violence nor was he party to any such protests, etc. The petitioner is a poor salesman/Airtel promoter working on a meager salary at a shop in Okhla. The petitioner has no

connection with the co-accused and has been falsely implicated under the draconian UAPA, 1967. Thus, the petitioner deserves bail.

21. I have heard learned counsel for the parties and perused the material available on record.

22. After going through the material available on record and submissions of learned ASG appeared for the State, it is not the case of the investigating agency that the petitioner was part of any such whatsapp groups which were made to coordinate/ organize protests against the Citizenship Amendment Act, 2019. Moreover, there is no allegation against the petitioner that he engaged in any form of terror funding or such other ancillary activity.

23. It was held by the Hon'ble Supreme Court in the case of ***Hitendra Vishnu Thakur vs. State of Maharashtra: (1994) 4 SCC 602***, that “*the designated Court should always consider carefully the material available on record and apply its mind to see whether the provisions of TADA are even prima facie attracted*”.

24. In the case in hand, it is not alleged by the investigating agency that the petitioner was privy or party to organizing protests against the CAA, 2019. The transaction relating to the SIM card had allegedly taken place in

December 2019, whereas the violence erupted in north east Delhi around the 23-25.02.2020. There is no proximate nexus between the aforesaid alleged incidents nor is it alleged that the said SIM card was provided, on the pretext or with the intention/objective, to be utilized for organizing protests, etc.

25. It is the case of the investigation agency that the SIM card was provided on the allurement of some extra money. The Hon'ble Supreme Court in the case of **Kartar Singh vs. State of Punjab: (1994) 3 SCC 569** has held that *"To encapsulate, for the discussion above, the expressions 'communication' and 'association' deployed in the definition should be qualified so as to save the definition, in the sense that "actual knowledge or reason to believe" on the part of a person to be roped in with the aid of that definition should be read into it instead of reading it down and clause (i) of the definition 2(1)(a) should be read as meaning "the communication or association with any person or class of persons with the actual knowledge or having reason to believe that such person or class of persons is engaged in assisting in any manner terrorists or disruptionists" so that the object and purpose of that clause may not otherwise be defeated and frustrated."*

26. Therefore, for invoking the UAPA against the present petitioner, it is the duty of the investigating agency to demonstrate that the petitioner had

“actual knowledge” that the said SIM card would be used for organizing the protests. It was imperative for the investigation agency to demonstrate that the petitioner had *“active knowledge”* about the utilization of the said SIM card. It is not alleged that the petitioner was party to any such conspiracy to organize protests.

27. Undisputedly, the petitioner voluntarily appeared before the agency for questioning and did not evade or flee between the periods of registration of the FIR i.e. (06.03.2020) and the date of his arrest i.e. (29.07.2020). This is material fact shows that the petitioner has fully cooperated with the probe and had made himself available as and when directed by the investigating agency.

28. It is pertinent to mention here that the onerous conditions/embargo under section 43D (5) of the UAPA, 1967 will not be applicable in the present case qua the petitioner herein as per the material on record and the investigating agency's own status report, which does not disclose the commission of the offences under the UAPA, 1967, except bald statements of the witnesses .

29. FIR in the present case was registered on 06.03.2020 and the

petitioner was arrested on 29.07.2020. There is no proof on record such as CCTV footage, video or chats of petitioner with any of the group except the allegation that he provided SIM on fake ID in December 2019 and taken a small amount of Rs.200/- for the same. It is not the case of the prosecution that he provided many SIMs and continued to do the same. It is also not the case of prosecution that he was part of any chat-group or part of any group who conspired to commit offence as alleged in the present case.

30. The case of prosecution is that Media Team of JCC, used that mobile number 9205448022, headed by co-accused Safoora Zargar has already been released on bail, however, on humanitarian ground.

31. In addition, admittedly, 3 accused have also released on bail against whom investigation is pending, so is of the petitioner.

32. In view of above, I am of the view that embargo of section 43-D of UAPA, 1967 is not attracted in the present, however, without commenting on the merits of the prosecution case, I am of the view that petitioner deserves bail.

33. Accordingly, he shall be released on bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the

satisfaction of the Trial Court.

34. Petitioner shall not directly or indirectly influence any witness or tamper with the evidence.

35. The Trial Court shall not get influenced by the observation made by this Court while passing the order in the present petition.

36. The present petition is allowed and disposed of accordingly.

37. Pending application, if any, also stands disposed of.

38. Copy of this order be transmitted to the Jail Superintendent concerned and Trial Court for information and necessary compliance.

39. The judgment be uploaded on the website forthwith.

(SURESH KUMAR KAIT)
JUDGE

OCTOBER 23, 2020
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