

SESSIONS CASE NO.38 OF 2009 AND OTHERS**ORDER BELOW EXH.1155:****Appearance :**

Learned advocate Mr. D.D. Pathan for the applicant accused.

Learned Spl.P.P. Mr. H.M. Dhruva for the State.

1. The present discharge application has been tendered u/s.227 of the Code of Criminal Procedure to discharge the applicant accused mainly on the grounds that the applicant accused is innocent, has been falsely involved in the present case, that no discovery or recovery has been effected to from the present applicant accused, that he did not go to Vaghmon camp for any training, the warrant issued against him is vague and is lacking description and details required under the law, there are 6 persons of the identical name in the area, the statements of the father and father-in-law of the applicant accused cannot be relied upon, there is no prima facie case against the applicant, he is not involved in the case as a conspirator, abettor or instigator, he has not been shown absconder in the previous charge-sheet, he has not participated in the crime or has not supplied any explosive material to the accused, the applicant

has neither harboured any accused or has been a witness to any of the incident and / or has not visited the place of the occurrence and that he has not given any confessional statement or made any admission.

The learned advocate Mr. Pathan for the applicant has been heard who has argued in tune of the grounds mentioned in the application by relying upon Annexure-A to Annexure-E, annexed alongwith the application mainly to mention that there is no description and full name of the applicant accused in the warrant of arrest at Annexure-A, that the unique I.D. Card, driving license and Electoral Card annexed at Annexure-B reveal that the applicant accused was not absconding one, in Annexure-B the real name of the applicant accused is shown to be Abdul Shaahid Abdul Hamid but, the same name has not been mentioned in the warrant at Annexure-A, Annexure-E i.e. the rent agreement and Nikahnama falsify the prosecution case as, in Annexure-E i.e. the rent agreement, the physical presence of the applicant accused has been shown and after the marriage of the applicant his two daughters have been born. It is also submitted that none of the accused arraigned the applicant accused before the applicant accused was arrested or has shown any overt act of the present applicant and that none of the accused arrested before the accused was arrested has shown the presence of the applicant

accused at the terrorist training camp and that the statement of the father and father-in-law of the applicant accused cannot be attached with any value since, are recorded after the the arrest of the applicant accused.

It has been urged that it is a fit case to discharge the applicant accused.

2. Learned advocate for the applicant has relied upon the following 4 citations:

[i] 1979 Cri.L.J. 154: Union Of India v. Prafulla Kumar Samal and another;

AND

[ii] 2005 (1) Crimes 532: Sarbans Singh & Ors. v. State of N.C.T. of Delhi;

[iii] A.I.R. 1996 Supreme Court 1744: State of Maharashtra v. Somnath Thapa;

[iv] 2002(1) G.C.D. 758 (Guj): Ibrahim @ Ibu Kalumiya Mansuri v. State of Gujarat;

3. Heard learned Spl. P.P. Mr. H.M. Dhruva for the state who has mainly submitted that the statements of the father and father-in-law of the applicant accused put on record a strong prima facie case against the applicant accused wherein, the extra-judicial

confession has also been made by the accused. The accused has confessed before the witnesses that he was given name as 'Usman' at the camp, that he had been to the (terrorist) training camp and that it was within his knowledge and information that the said terrorist training camp was that of SIMI. Spl. P.P. Mr. Dhruva has forcefully submitted that the two statements are sufficient to frame charge against the applicant accused.

4. It has been further submitted that the offences committed by the applicant accused are serious in nature and the applicant accused is liable for the punishment upto life. The method and the modus adopted by the co-accused has also been adopted by the applicant accused by keeping alias name so as to see to it that his identity is not revealed, the accused applicant knows other accused and that he knows A-14, who is prima facie involved in the offence and against whom, serious charges have been leveled. It has also been submitted that the warrant at Annexure-A is neither vague nor is with insufficient contents and that, in the first charge at EXH.122, the applicant accused has been shown to be absconding accused. It has also been submitted that as a settled position of law, the documents produced by the applicant accused cannot be appreciated at this stage by the Court as at this stage, in view of the provisions of the Code of

Criminal Procedure at Sec.227 and 228, the material collected by the prosecution is only required to be seen to decide as to whether the applicant accused should be discharged or the charge should be framed against him. He has added that even if the documents produced are seen, they rather disclose the prima facie case against the applicant accused and hence, the application needs to be rejected.

5. Learned Spl. P.P. Mr. H.M. Dhruva has invited the attention of the Court on the judgment reported at **(2005) 1 Supreme Court Cases, 568: State of Orissa v. Debendra Nath Padhi** and has submitted that at the stage of framing the charge, the material filed by the accused should not be considered as, there is no provision in the Code of Criminal Procedure which grants the accused any right to file any material and that the said right is granted only at the stage of trial.

6. Having perused the application, accompanying documents and upon appreciating the oral submission made before this Court, the following points have been found essential to be considered to decide the present application.

[a] The submission that the applicant accused has not been previously shown absconding is found to be baseless as, upon perusing the charge EXH.122

(which is framed basing upon the material supplied by the investigating agency), it becomes amply clear that the name of the applicant accused has been shown at serial no.20 in the list of absconding accused. This point is clearly revealing that right from the beginning, the case of the prosecution is that the applicant accused is absconding.

- [b]** Upon carefully perusing the statements of the witnesses viz. Abdul Hamid Usmangani Nagori and Mohd. Shoeb @ 'Bannu' S/o. Mohd. Yusuf Nagori, it becomes clear that it is the applicant accused who has confessed before both the prosecution witnesses that he had been to the terrorist training camp held at Vaghmon, Kerala where, he was given name as 'Usman'. The witnesses further state that they both had to scold the applicant accused for the same. It is also further mentioned that the applicant accused has informed both the witnesses that he went to the said terrorist training camp in the company of A-65 of Ujjain.

In the humble opinion of this Court both these statements are putting on record a very strong prima facie case against the applicant accused to have been knowingly and intentionally involved in commission of the offences and to

have committed overt act of attending the training camp, etc. The fact that the applicant accused went there in the company of A-65 also points out to a very important circumstance of his relationship with the co-accused and to have visited and attended the training camp in the company of the said co-accused and that the conjoint reading of both these statements, perceiving the confessional contents stated by the applicant accused before the said witnesses, there is no doubt left out in the judicial mind about existence of strong prima facie case against the applicant accused. Even these statements are enough, sufficient and satisfying material to frame the charge against the applicant accused.

[c] In view of the peculiar facts and circumstances of the case and the evidence collected by the investigating agency, no substance has been found in the submission made by the learned advocate on behalf of the applicant accused that there are defects in warrant of arrest produced on record at Annexure-A.

[d] There is also no force in the submission that in view of the documents produced at Annexure-B collectively, the identity of the applicant accused is doubtful and that the applicant

accused is not the person to whom the investigating agency was searching or wanted to arrest.

[e] The submission that since 6 persons of the similar name were residing in the same locality where the applicant accused resides, the identity of the applicant accused is doubtful, is also found without any base and any merit as, upon closely perusing the age, name of the father, etc. of the persons shown with the name of 'Shaahid' and more particularly as the document is also with the photograph, it cannot be accepted that any doubt has even been prima facie validly created by the applicant accused.

[f] The applicant accused has confessed of having attended the terrorist camp in the company of A-65 who, according to the documents on record, is the person who has identified many many co-accused and is a person who has shown the place of offence. These documents are placed on record by the applicant accused as a part of Annexure-D.

In the humble opinion of this Court, the documents are clearly revealing the prosecution case that the applicant accused has gone to attend the terrorist camp and has in fact, attended the terrorist camp while he was in the

company of the accused who is not only showing the place of the offence but, is also identifying many many co-accused. The relationship of the applicant accused with the said A-65 is the circumstance which not only goes against the applicant accused, but, it also strengthens the already strong prima facie case existing against the applicant accused. The document at Annexure-E that of the rent agreement, Nikahnama, etc., in no way show that the applicant accused was not absconding accused. When the applicant accused is pointing to his physical presence at his residence and when the investigating agency still had to get the warrant of arrest against the applicant accused, it rather shows the conduct of the applicant accused. The conduct of the investigating agency need not be doubted when it has got issuance of the arrest warrant as, no investigating agency would choose not to arrest an accused in spite of the fact that the accused is very much available. This Court does not find any substance in this part of the submission as well.

[g] The principle pressed into service by learned Spl. P.P. Mr. Dhruva is applicable to this case that, this Court cannot consider the material filed by the applicant accused at this stage.

But, some of the said material is nothing but, the documents like panchnama, statements, photo identity panchnama, etc. on which, even the prosecution has also relied upon. The remaining material, though is not forming a part of the prosecution material, this Court has perused the same to satisfy the judicial conscience. Upon doing the said exercise, this Court firmly concludes that none of the material produced alongwith the application is weighty enough to take away the prosecution case firmly laid against the applicant accused which emerges in form of a very strong prima facie case against the applicant accused.

[h-1] Both the citations at paragraph No.2[i] and 2[ii] have been pressed into service by the applicant accused to submit that the Court has power to sift and weigh the evidence for the limited purpose of finding out the prima facie case, if any.

This is a cardinal principle to decide as to whether charge can be framed or not, it is applicable but, in the facts of the case on hand, there is prima facie case against the applicant accused and there is no dispute about the power of the Court.

[h-2] The citation at paragraph No.2[iii] has been

pressed into service by the applicant to submit that for establishing the charge of conspiracy, knowledge about indulgence in either an illegal act or legal act by an illegal means, that of the applicant accused, is necessary.

In the humble opinion of this Court, at paragraph No.41 of the cited judgment, it has clearly been observed for the fact of the cited case that since there was no material to frame individual charge u/s.3(3) of the TADA, the general charge qua the said appellant was held to have been failed. In the cited case, the role ascribed to the said appellant was only to book tickets.

In view of the facts and circumstances of the case on hand and more particularly, two statements of the witnesses when very clearly focus on the individual role, the knowledge and information about the applicant accused, which clearly reveal prima facie involvement of the applicant accused, this judgment at serial No.3 pressed into service by the applicant accused would not have any application to the facts of the present case.

[h-3] The citation at paragraph No.2[vi] has been pressed into service by the applicant is to

submit that no accused can be charged on assumption and surmises.

In view of the facts decided herein above while discussing the citation No.3 submitted by the learned advocate for the applicant accused, it becomes amply clear that there is no question of framing charge against the present applicant accused on any assumption or surmises. Rather, there appears clearcut prima facie case against the applicant accused. Hence, the citation is not helping the applicant in any manner, keeping in view the facts and circumstances of the present case.

[h-4]As has been discussed herein above, none of the citations pressed into service by the applicant accused, is providing any aid to the applicant accused and that in the facts and circumstances of the case, the said 4 citations are not helping to grant the application in view of the facts and circumstances of this case when, this becomes a case of strong prima facie case against the applicant accused.

[i] It is hardly required to be stated that the case against the applicant accused is not based on any assumption and surmises and that a clear role has been attributed to the applicant accused in the criminal conspiracy with the

knowledge and information the applicant possessed. Not only that, the act and omission of the applicant accused is also clearly prima facie found to be intentional as well.

7. In view of the above reasoning, this Court does not find any substance in the contents of the application and the submission made for and on behalf of the applicant. Hence, the present application needs rejection and therefore, the following final order is passed:

O R D E R

The present application of discharge, EXH.1155 filed by the applicant accused is hereby rejected and is accordingly disposed of.

Pronounced in the open Court today on this 10th day of October, 2013 in presence of all concerned.

(Jyotsna Yagnik)
Designated Judge,
Serial Bomb Blast Cases,
SIT Courts, Ahmedabad.
Unique I.D. Code No.GJ00024