

SC/38/2009

ORDER

IN THE CITY SESSIONS COURT AT AHMEDABAD

3

SESSIONS CASE NO. 38 OF 2009.

WITH

SC/418/2009

Complainant:

THE STATE OF GUJARAT
CITY CIVIL AND SESSIONS COURT, BHADRA, AHMEDABAD.
ahmedabad

VERSUS

Accused:

JAHID KUTBUDDIN SHAIKH 25
C/O. POPATLAL, SANDHI AVENUE, OPP. VISHALA HOTEL,
JUHAPURA, AHMEDABAD & Others.

**ORDER BELOW EXH. 335 IN SESSIONS CASE NO.38 OF
2009.**

1. This is an application dated 24-01-2012 submitted by Superintendent of Central Jail, Ahmedabad requesting to pass necessary orders for the production of accused (1) 5720/09 – Mohammad Ansar @ Nadvi @ Siddique Abdul Razaq Muslim (2) 5721/09 – Saduli @ Haris Abdulkarim Muslim before the Special NIA Cases Court, Ernakulam, Kerala on 15.02.2012.

2 Facts of the Application.

2.1 It is stated that the accused (1) 5720/09 – Mohammad Ansar @ Nadvi @ Siddique Abdul Razaq Muslim (2) 5721/09 – Saduli @ Haris Abdulkarim Muslim are at present in the Central Jail, Ahmedabad in Judicial custody in the case No. 38 / 09 (Serial Bomb blast).

2.2 The another case bearing Sessions Case No.01/2011 NIA U/s. 120B, 124A of IPC 10(a)(i), 10(a)(ii) and Sec 13(1)(b) of UAP Act, 1967 is pending before the Special NIA Cases Court,

Ernakulam, Kerala. The accused is required to be produced before the said Court on 15-02-2012.

2.3 Xerox copy of the order/production warrant u/s. 267 requiring the officer in-charge of the prison to produce accused before the Special NIA Cases Court, Ernakulam, Kerala is attached with the application. It is requested to pass necessary order to produce the above accused before the Special NIA Cases Court, Ernakulam, Kerala.

3 Merits of the case

3.1 A Xerox copy of the production warrant sent by the Special NIA Cases Court, Ernakulam, Kerala is attached with the application which is marked as at Ex.355/1 and 355/2, wherein it is stated as under :

*"You are hereby required to produce the said (name of accused) under safe and sure conduct before the Special Court NIA Cases, Ernakulam on the 15th day of February 2012 at 11 : 00 a.m. thereto **answer to the said charge** and after this Court has dispensed with his further attendance cause him to be conveyed under safe and sure conduct back to the said prison"*

3.2 On perusing the said warrant, it transpires that the purpose of production of the accused before the Special NIA Cases Court, Ernakulam, Kerala is specifically stated that his presence is required for to answer the charge U/s.228 of the Cr.P.C.

3.3 The Government of Gujarat had passed order dated 2-09-2009 u/s. 268 of the Criminal Procedure Code that in the public interest, the accused 62 in number of the serial bomb blast shall not be removed from the Central Prison, Ahmedabad. The name of the present is included in the above 62 accused at serial no 59 and 60.

3.4 It is also stated that there are 35 cases (serial blast) are pending against the accused. There are many cases pending against the accused out of Gujarat.

3.5 It is observed in the paragraph no. 2 of the order passed by the Hon'ble Supreme Court dated 06-07-2011 in Writ Petition (Cri.)No. 14 of 2010 that :

"Mr. D.K.Garg, learned counsel appearing for the petitioners submit that the Home Department of State of Gujarat has issued a general order dated 27-10-2009 wherein it is stated that accused persons shall not be moved out of central prison, Ahmedabad. This submissions is countered by learned Solicitor General who states that even after this order, the accused persons were produced in Delhi. As specific query to this effect has also been put to the learned counsel appearing for the State of Gujarat who assures the Court that whenever it will be necessary and whenever there are proper warrants by any of the special courts, the accused persons shall be moved out of Ahmedabad to be present in that court."

4. The case against both the accused in the Special NIA Cases Court, Ernakulam, Kerala is pending for framing of charge. Presence of accused in the said Court is necessary for the framing of charge. Speedy trial is a fundamental right of the accused. Therefore accused are required to be sent to Special NIA Cases Court, Ernakulam, Kerala.

5. Considering the fact of the application, presence required for trial, fundamental right of the accused, on the facts and circumstances of the case and in the interest of the justice, the following order is passed.

ORDER

This application is granted.

The Jail Superintendent of Central Jail, Ahmedabad is permitted to produce the accused (1) 5720/09 – Mohammad Ansar @ Nadvi @ Siddique Abdul Razaq Muslim (2) 5721/09 – Saduli @ Haris Abdulkarim Muslim before the Special NIA Cases Court, Ernakulam, Kerala on 15.02.2012 subject to following conditions.

1. The Jail Superintendent shall obtain temporary revoke order u/s. 268 of the

Criminal Procedure Code from the Government of Gujarat for removing the above accused from the jail.

2. After completion of the work in the Special NIA Cases Court, Ernakulam, Kerala on 15.02.2012, the above accused be returned immediately to the Central Jail, Ahmedabad. Accused shall not be retained for any purpose.

3. The Jail Superintendent is directed and ordered to take all precautions regarding the maintenance of human rights of the above accused during the transit period.

4. Jail Superintendent will inform to this Court on return of the above accused in the jail.

Copy of the order be sent to the Jail Authority accordingly.

Dt.: 31-01-2012

(V. P. Patel)
Special Judge
Designated Court
Bomb Blast Cases, Ahmedabad.

