

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.

VERSUS

Accused:

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

Appearance:

H.M.DHRUVA For Complainant 1
S.P.BRAHMBHATT For Complainant 1
A.M.PATEL For Complainant 1

No Advocate For Accused

ORDER BELOW EXH. 319 IN SESSIONS CASE NO.38 OF 2009.

1. This is an application dated 13-01-2012 submitted by Superintendent of Central Jail, Ahmedabad requesting to pass necessary orders for the production of accused Afzal Mutlib Usmani @ Afsar and 14 others before the City Sessions Court, Greater Bombay, Maharashtra on 01.02.2012.

2 Facts of the Application.

2.1 It is stated that the accused Afzal Mutlib Usmani @ Afsar and 14 others 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 no. --- bearing C.R.No.152/2008 is pending before the City Sessions Court, Greater Bombay, Maharashtra. The accused are required to be produced before the said Court on 01.02.2012.

2.3 The Production warrant u/s. 267 requiring the officer in-charge of the prison to produce accused before the City Sessions Court, Greater Bombay, Maharashtra is attached with the application. It is requested to pass necessary order to produce the accused before the City Sessions Court, Greater Bombay, Maharashtra.

3 Merits of the case

3.1 The production warrant under-section 267 of Cr. P. C. sent by the City Sessions Court, Greater Bombay, Maharashtra is attached with the application which is marked as at Ex.319/1. This is the original production warrant U/s. 267 issued by the City Sessions Court, Greater Bombay, Maharashtra, wherein it is stated as under :

“The attendance of above-named accused under trial prison in the above case at present detailed in your person is required in the court of answer to charges punishable under-section.

You are hereby required to produce the above-named accused in the above case under safe and sure conduct before His Honour Addl. Special Judge, Shri S. A. Deshmukh, Court No. 55 on 01.02.2012 at 11 : 00 a.m. sharp ”

3.2 On perusing the said warrant, it transpires that the purpose of production of the accused before the *City Sessions Court, Greater Bombay, Maharashtra* is specifically stated that their presence is required for to answer the charge U/s.228 of the Cr.P.C., in the M.C.O.C. Special Case No.04/2009@16/2011 (Court No.55).

3.3 As per the warrant of the City Sessions Court, Greater Bombay, Maharashtra, the following accused are required to be produced :

S. No.	Name of Accused	Accused No.
1	Afzal Mutalib Usmani @ Afsar	1
2	Sadique Israr Ahmed Shaikh	2
3	Mohd. Arif Badruddin Shaikh	3
4	Mohd. Jakir Abdul Haq Shaikh	4
5	Asif Bashir Shaikh	6
6	Mohd. Mansoor Asgar Peerbhoy	7
7	Mubin @ Salman Kadar Shaikh	8
8	Mohd. Akbar Ismail Choudhary @ Saeed	10
9	Anik Shafiq Sayyed @ Khalid	11
10	Ahmed Abubakar Bawa	17
11	Mohd. Naushad Mohd. Irshad Sayyad	18
12	Fazal-E-Rehman Mussadiq Khan Durani	20
13	Anwar Abdulgani Bhagwan	21

14	Mobin Abdul Shakoor in M.C.O.C.16/2011	
15	Amin Ayub Shaikh in M.C.O.C.16/2011	

3.4 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. It is found from the record that there are approximately 35 cases (serial blast) are pending against the accused.

3.5 The name of the accused at Sr. No. 1 to 13 are included in the above 62 accused at serial nos. 28, 29, 30, 31, 32, 33, 34, 43, 44, 45, 46, 47 and 51. The name of the accused at Sr. No. 14 and 15 is not included in the list of 62 accused. It is pertinent to note that these two accused are not in the judicial custody of this Court. Therefore, this order is not applicable to the accused at Sr. No. 14 and 15 of para 3.3.

3.6 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 the accused in the City Sessions Court, Greater Bombay, Maharashtra 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 City Sessions Court, Greater Bombay, Maharashtra.

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 Afzal Mutlib Usmani @ Afsar and 12 others (Sr. No. 1 to 13) as stated in para 3.3 of this order before the City Sessions Court, Greater Bombay, Maharashtra on 01.02.2012 subject to following conditions. This

order is not applicable to the accused at Sr. No. 14 and 15 of para 3.3 of this order.

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 City Sessions Court, Greater Bombay, Maharashtra on 01.02.2012, the above accused be returned immediately to the Central Jail, Ahmedabad.
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.: 16-01-2012

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

