

ORDER BELOW EXH.242 IN SESSIONS CASE NO.38 OF 2009.

(1) This is an application dated 26-09-2011 submitted by Deputy Superintendent of Central Jail, Ahmedabad requesting to pass necessary orders for the production of accused Mohammad Saif @ Rahul Sadab Ahmed and Saifur Rehman @ Saifu @ Saif Abdul Rehman in the Court of Principal Judge, Jaipur, (Bomb blast case, Jaipur), Rajasthan.

(2) Facts of the Application.

It is stated that the accused Mohammad Saif @ Rahul Sadab Ahmed and Saifur Rehman @ Saifu @ Saif Abdul Rehman of the case No. 38 / 09 (Serial Bomb blast are at present in the Central Jail, Ahmedabad (Judicial custody). The another case against the above two accused is pending before the Court of Principal Judge, Jaipur (bomb blast case, Jaipur), Rajasthan (hereinafter to be referred as Jaipur Court for the sake of brevity) for the offence punishable u/s. 121A, 124A, 153A, 302, 307, 427 and 120B of Indian penal code, u/s. 3, 10, 13, 16(1)A, 18, 20, 38 of the The Explosive Substance Act, 1967. The accused are required to be produced before the Jaipur Court on 29-09-2011.

It is also stated that there are 35 cases (serial blast) are pending against these accused. There are many cases pending against the accused out of Gujarat. The Government of Gujarat has ordered u/s. 268 of Criminal Procedure Code. Xerox copy of the order u/s. 267 requiring the officer in-charge of the prison to produce accused before the Jaipur court is attached with the application. It is requested to pass necessary order to produce the above accused before the Jaipur Court.

(3) It is submitted by the Shri I. K. Sonara Jailor, Sabarmati Jail, that the accused are required before the Jaipur Court. The case is pending for the framing of the charge against the accused in the Jaipur Court on 29-09-2011.

(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. The name of the present is included in the above 68 accused.

(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.”

(6) In the under mentioned cases the Hon'ble Supreme Court has held that “ the right of trial is the Fundamental Right of the Accused, fair trial are concomitant to preservation of fundamental right of accused under Article 21 of the Constitution of India. The extent of right to be a fair trial of an accused must be determined keeping in view the fundamental rights as adumbrated under Article 21 of the Constitution of India as also the International Convention and Covenants chartered in Human Rights. Speedy trial is a fundamental right of an accused. The orders passed by the competent court of law as also the provisions of Code of Criminal Procedure must be construed having regard to the Constitutional scheme and legal principles in mind”.

(A) AIR 2010 Supreme Court 2352 “Sidhartha Vashisht V/s. State (NCT Of Delhi)”.

(B) AIR 2009 S.C. (Supp) 852 “Noor Aga V/s. State of Punjab”
Para 9.

(C) AIR 2008 Supreme Court 2066 S. Rama Krishna V/s. Rami Reddy
- Para 12

(7) The case against the accused in the Jaipur Court is pending for framing of charge. Presence of accused in the Jaipur 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 be Jaipur Court.

(8) Considering the fact of the application, presence required for framing of the charge, 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

The Jail Superintendent of Central Jail, Ahmedabad is permitted to produce the accused Mohammad Saif @ Rahul Sadab Ahmed and Saifur Rehman @ Saifu @ Saif Abdul Rehman in the Court of Principal Judge, Jaipur, (bomb blast case,

Jaipur), Rajasthan on 29-09-2011 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 two accused from the jail.
2. After framing of the charge in the Court of Principal Judge, Jaipur (bomb blast case, Jaipur), Rajasthan, above two 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 two accused during the transit period.
4. Jail Superintendent will inform to this Court on return of the above two accused in the jail.

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

Dt.: 26-09-2011

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