

SESSIONS CASE NO.38 OF 2009 AND OTHERS**ORDER BELOW EXH.678, 679 AND 680 :**

Appearances :

Learned advocate Mr. I.M.Munshi for both the applicants accused - Mohammad Yunus Maniar and Mohammad Shafiq Ansari respectively.

(For convenience they shall be referred to as A-65 and A-66 as before beginning of the trial against A-1 to A-64, they were so referred)

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

Heard L.A. Mr.J.M.Pathan for Hasib Raza @ Shamimbhai Firdos Raza Mohammad Saiyad (shall be referred to as A-67 for the same reason)

Heard L.A. Mr.Somnath Vats for Mohammad Habib @ Habib Falai @ Taiyab S/o. Abdul Jaish Shaikh (shall be referred to as A-71 for the same reason)

Heard Learned Special P.P. Mr.H.M.Dhruva for the State.

(1) All these accused applicants have tendered their applications under Section 227 of Cr.P.C. viz. Exh.678 by A-71, Exh.679 by A-65 and A-66 and Exh.680 by A-67 to discharge them on the grounds mentioned herein below. Since certain common material are to be appreciated to deal with these applications and since certain common points have emerged from the submissions, to avoid repetition of those points, it is found just and proper to pass a common order for all the applications. However, the different submissions shall also be dealt differently.

(2) Submissions for A-65 and A-66 :

Learned advocate Mr. Munshi has mainly submitted that the usual practice of the police is to arrest Muslims in case of bomb blasts. In case of attack on Ajmer Dargah, Malegaon, Samjhota Express, firstly Muslims were arrested and detained for along time, but later on, it stood revealed during the investigation that the Hindu Organization viz. Abhinav Bharat was involved in the said blast. Thus, the innocent Muslims were being harassed by the police. In this case also the police has falsely involved the accused by concocting and creating a false case against the accused No.65 and 66 who both are innocent and have not committed any crime. There is no prima facie case against both of them to have hatched any criminal conspiracy or to have played any role in that, no discovery or recovery has been shown against either of them, none of them has given any confessional statement u/s.164, none of the secret witnesses involve the accused in the instant case, No prima facie case is found against any of them.

(2-a) The allegation that the accused are members of SIMI and have participated in hatching the criminal conspiracy with a common intention and to have taken terrorist training has not been prima facie proved. No act of violence or inciting people to commit violence or to create any disturbance in the society has been proved against either of the accused.

(2-b) As far as the accused No.65 Mohd. Yunus Maniar is concerned, the prosecution has foisted the case against the accused that he has taken training to use weapons at Wagamor, Kerala and that he has shown the place where the

training was in fact was taken and the camp was in fact been organized. If the record is carefully perused it becomes clear that the police was already knowing the site of training before it was shown by the accused and therefore, this panchnama is not admissible in evidence and cannot be termed to have been covered in the purview of Sec.27 of the Indian Evidence Act, which in fact has been drawn to create evidence against the accused.

(2-c) No evidence whatsoever is on the record or it is not the case of prosecution that this accused has even, then after, participated in the second terrorist camp viz. the camp held at Halol. Hence, it is prima facie clear that the accused who has been falsely alleged to have participated in the first terrorist training camp at Wagamor, Kerala has thereafter, withdrawn from the conspiracy and therefore, for lack of continuity, the prosecution case against him is too weak to frame a charge.

(2-d) As far as accused No.66 Mohd. Shafiq Ansari is concerned, he is alleged to have participated in the second terrorist camp held at Halol, Pavagarh Gujarat and that he has shown this place of holding the training camp of Halol. It has been submitted that this place has been repeatedly shown to the police by many of the accused as is a clear position on record. Hence, since the police was already knowing the place of holding the terrorist camp, there is nothing on record to show that the accused has for the first time shown the place of terrorist camp. Considering the same, it becomes clear that this panchnama is not admissible in evidence.

This panchnama qua both the accused, is illegal and

inadmissible in evidence.

(2-e) None of the eye-witnesses or the secret witnesses involve either of the accused. There are no circumstantial evidence against the accused. It is not a case of even suspicions. The accused have been falsely involved in the crime, the thermocol pieces and glass pieces found from the site of the terrorist training camp and the bill of air-gun etc. are all apparently incredible and that basing upon such evidences, the accused cannot be involved in the serious offences. There is no evidence of any provocative or fiery speeches to have been delivered or the accused to have carried out any seditious activities, considering which it cannot be believed that the accused have hatched any kind of criminal conspiracy as alleged, considering which both the accused should be discharged as prayed for.

(2-f) About 15 accused have retracted their confession hence cannot be relied upon.

The above submissions are in the tune of the contents of the application preferred by them.

(3) In support of the application, certain documents of different cases and panchnamas of the instant case have been brought on the record of the case. It is from mark 679/A-1 to 679/A-5 and mark 679/A-7 to 679/A-14.

(3.1) In support of the submissions, the following citations have also been pressed into service.

[a] **2009 (1) G.L.R., 245 in the matter of Sarvansingh Omkarsingh Rathod v. State of Gujarat and Another.**

This judgment has been pressed into service to submit that when a fact was already known to the police, there cannot be a discovery again of the same fact.

[b] **1994 SCC Supp. 2 - 707, in the matter of State of U.P. v. Sanjay Singh.**

It is emphasized to submit that mere suspicion of motive is not sufficient to frame charge against the accused.

It has been urged to discharge both the accused.

(4) Submissions for the Accused-67 :

Learned advocate Mr.J.M.Pathan has mainly submitted that, no prima-facie case is made out against the accused to enable the Court to frame charge.

In the first charge-sheet neither name nor evidence against the accused has been revealed. There is no agreement made by the accused with any of the co-accused. In the statements of secret PW A to Z, no role is attributed to this accused. The accused has entertained two of the guests is the only evidence against him but it is not incriminating in nature. No discovery or recovery has been effected from this accused. There cannot be any conspiracy hatched by this accused since the co-accused were arrested first and then this accused was

arrested. He was not present at the site or in the training camp. The accused was arrested by the Crime Branch for the offence under Arms Act and then after evidence against him were fabricated to falsely involve him in this case hence he be discharged.

(5) Submissions for the accused No.71 :

(5-a) The accused No.71 - Mohammad Habib @ Habib Falai @ Taiyab S/o Abdul Jaish Shaikh herein has preferred an application mainly on the grounds that, no prima facie case is made out against this accused, the accused has not committed any offence, the responsibility of framing the charge is that of the Court and in the case the material on record cannot be termed to be sufficient to frame the charge against the accused.

(5-b) The accused was never a member of a banned organization SIMI, the statements of the secret witnesses and the statements of the co-accused u/s.164 Cr.P.C. do not connect the accused with the crime. The accused has not attended any terrorist training camp, no role has been played by him in the criminal conspiracy, no direct, indirect or circumstantial evidence, suggest either knowledge and or agreement of this accused. There is no recovery or discovery from the present accused, principle of fairness requires to discharge the accused.

Further, the photo identification should not be attached with any value as such provision in TADA has been struck down.

(5-c) Learned advocate Mr. Somnath Vats has argued on the same line and has further added that the documentary evidence produced on record vide EXH.685/1 to 685/8 are clearly establishing that the name of the arrested accused is not 'Falai' but, is only Mohammed Habib. Vide the list the passport of the accused, electoral list, mark-sheet of the accused, photo election card of the accused, student identity card of the accused are all revealing the name of the accused to be Mohammed Habib Abdul Jaiz and not 'Falai' hence, from the documents produced by the accused the identity of this accused since, becomes doubtful the accused needs to be released.

(5-d) Learned Advocate Mr. Vats has produced following citations on the record of the case in support of his submissions :

[i] Judgment of Hon'ble Supreme Court of India in ***Cri. Appeal No.1460/2012*** in the matter of ***C.B.I., Hyderabad v. K. Narayan Rao, cited in (2012) 3 SCC Criminal, 1183.*** Paragraph 11 has been emphasized, the gist of which is that when there is grave suspicion and not suspicion, where there is no basic infirmity, where it appears that the accused might have committed offence and where the material produced by the prosecution on the face value discloses the existence of ingredient of commission of offence by the accused, then only the charge can be framed.

[ii] ***2005 (0) G.L.H.E.L. SC, 35327, in the matter of A.N.***

Venkatesh v. State of Karnataka, paragraph 10 has been emphasized to submit that, the conduct of the accused is relevant if such conduct influences or is influenced by any fact in issue or relevant fact.

- [iii] **1978 (0) G.L.H.E.L. SC, 21273, in the matter of Prakash Chand v. State (Delhi Administration)**, it is submitted that, there is clear distinction between conduct of the accused and the statement made to police officer.

(What is clarified in the judgment is that the evidence of circumstance that the accused led the I.O. to the place is relevant and the conduct not amounting statement before police is also relevant.)

- [iv] **AIR 2005 SC, 3820 in the matter of State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru AND Shaukat Hussain Guru v. state (NCT of Delhi)**. It is mainly submitted that as far as the conspiracy is concerned, agreement is the essential ingredient. Mere knowledge, or even discussion of the plan is not, per se, enough. Meeting of minds of two or more persons for doing an illegal act or an act by illegal means is essential to prima facie prove the allegation of criminal conspiracy. Those who drop out cannot be roped in as conspirators on the basis of their mere knowledge unless they commit some acts or omissions from which guilty common intention can be inferred.

It will be difficult to get direct evidence of the agreement but a conspiracy can be inferred from even the

circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

In most of the cases, proof of conspiracy is largely inferential though, the inference must be founded on solid facts, surrounding circumstances and antecedents and subsequent conduct among other factors constitute relevant material. A few bits here and a few bits there on which the prosecution relies, cannot be held to be adequate in criminal conspiracy.

[v] ***AIR 1988 SC, 1883 (equivalent citations 1988(36) BLJR-Pg.633, 1989 Cri. L.J.-Pg.1, JT 1988(3) SC-Pg.191, 1988(2) SCALE-Pg.117, (1988) 3 SCC-Pg.609 & Supp2SCR-Pg.24), in the matter of Kehar Singh & Others v. State (Delhi Administration)***; this judgment is pressed into service to submit that if the accused was really absconding, which is the case of the prosecution qua this accused, then, the prosecution ought to have taken statements of some witnesses to indicate that the witness went to find him out, either at his residence or at any other place. But, there is no such material available, hence, against the accused the circumstances of abscondance cannot be used to book the accused in the crime.

[vi] ***AIR 1990 SC, 1962 (equivalent citations : 1990 Cri.L.J.-Pg.1869, JT 1990(3) SC-Pg.408, 1990(2) SCALE-Pg.193, (1990)4 SCC-Pg.76 & [1990]3SCR-Pg.633)***; It is submitted that while framing the charges,

the Judge has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out or not.

When two views are equally possible and when it does not become a case of grave suspicion against the accused, the Judge has right to discharge the accused.

A strong suspicion found from the material, leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge against the accused in respect of commission of that offence.

The Judge is not required to accept all the prosecution case as gospel truth. The Court is required to evaluate the material and documents on record to find out that at the face value, the existence of all the ingredients constituting the offence whether exist on the record or not.

When enhanced punishment as compared to the punishment prescribed for the similar offences under the ordinary penal laws of the country, is found then a higher responsibility and duty is cast on the Judge to make sure that there exists prima facie evidence for supporting the charge leveled by the prosecution.

It was forcefully submitted to discharge the accused.

(6) By Learned Special P.P. :-

After having highlighted the conspiracy hatched by the four accused with the co-accused, Learned Special P.P. took the Court to various judgements to submit on justification to reject the discharge applications filed by all the four accused. Learned special P.P. Mr.Dhruva has submitted on the incriminating evidence prima-facie showing involvement of the four accused in the crime. The submissions made by him have been avoided to be enlisted here for the sake of brevity and to avoid repetition as most of those submissions have been included in the opinion part of the order.

(6-i) The citations relied upon by the Learned Special P.P. are as under :

[a] **2012 (3) G.L.R., 2593 in the matter of Supabhai Vestabhai Vasava v. State of Gujarat**, it is on the point that the conduct of the accused u/s.8 of the Evidence Act is admissible apart from its admissibility as disclosure statement u/s.27.

[b] **1996 Cri.L.J., 2448 in the matter of State of Maharashtra v. Som Nath Thapa**; when prima facie case is made out and when the grounds to presume that the accused has committed the offence exist, the charge must be framed.

If on the basis of material on record a Court could come to conclusion that commission of offence is probable consequence, a case for framing of charge, exists.

The material produced at the initial stage needs to be

accepted as true. If it is shown that the accused might have committed the offence, then it is sufficient.

- [c] Para. 3.1, 3.2 and 5.4 of the judgment delivered while dealing and disposing of Special Criminal Application No.1879/2011 has also been pressed into service which is the order in the application preferred against the order of the Learned predecessor on the application to discharge the accused No.29 of this case viz. Serial Bomb Blast Case.

As has been observed by His Lordship, when charge under Section 120B of hatching criminal conspiracy is framed it is very unsafe to consider the individual role played by the accused persons and to consider their case only qua role played by them. (This is comonly applicable to all the four accused applicants.

The application against the order on the discharge application was dismissed.

- [d] While dealing and disposing of the Criminal Misc. Application No.3807/2012 preferred by A-67 to challenge the order on bail application passed by Learned predecessor Judge, Hon'ble High Court of Gujarat was pleased to observe that, "However, looking to the papers of charge-sheet, it is prima-facie established that the applicant is involved in the serious offence of conspiracy and hence, individual role of each accused cannot be looked into at this stage."

It has also been held that entire papers of the charge-sheet should be considered and that looking to the role in conspiracy and harbouring of other accused, the bail application (of A-67) was rejected.

This is the point which is of prime consideration as far as the case of A-676 is concerned.

(7) Having heard the rival submissions of both sides, having perused the charge-sheet and accompanying papers, having appreciated the submissions made and upon perusing the applications of the four accused alongwith the accompanying documents, upon weighing all the material produced by both the sides and considering the settled position of law to decide the discharge applications, following points have emerged on record which have been considered by this Court to decide the discharge applications.

(7-a) The petitioners and the co-accused have been charged for the offences punishable u/s.121(A), 124(A), 153 (A) (1)(b), 302, 307, 326, 435, 427, 465, 468, 471 of the Indian Penal Code, 1860, Sec. 3, 5, 6 and 7 of the Explosive Substances Act, 1908, Sec.10, 13, 16, 18, 19, 20, 38, 39 and 40 of the Unlawful Activities (prevention) Act, 1967 and u/s.25(1)(B)(A) and 27 of the Arms Act, 1959 and u/s.65 and 66 of the Information Technology Act, 2000 and u/s. 3 and 4 of the Damage to the Public Properties Act, 1984 all r/w. Sec.120(B) and Sec.34 of the Indian Penal Code. These are grave and serious offences. It is offence against life and property of the people hence cannot be taken lightly.

(7-b) As emerges from the record of the case, there seems to be larger and deep rooted conspiracy hatched by the accused and the co-accused to threaten the unity, security and sovereignty of India which is also to strike terror and to create a sense of insecurity and climate of terror in the country. This cannot be taken lightly.

(7-c) The base of the prosecution case is, the accused were members of the banned organization named SIMI who have held two terrorist training camps to promote terrorist activities in India, firstly it was at Kerala and in the year, January, 2008 it was near Pavagarh, Gujarat State. These training camps prima-facie seems to have been attended by several accused persons, they had conspired to strike terror among the people of different community by explosion of bombs. The close connection of the applicant-accused which reveals through identity of those co-accused by these accused create grave suspicion and the prima-facie case of their involvement in the crime.

As a result of the criminal conspiracy, explosion of serial bomb blasts was done. About 56 persons were killed and about 240 persons have sustained injuries in this terrorist activities. Over and above this, lots of damages to public and private properties has even been caused. This cannot be viewed lightly by any Court.

(7-d) In the conspiracy, direct evidence is seldom available, the accused always play different roles to carry out the main object of conspiracy. The terrorist training camps were arranged, training was imparted in those camps, the

youth was instigated by provoking speeches, hatred towards nation was created, the training to procure explosives, to prepare bombs and other such training were imparted. These all link the accused including the applicants with the crimes. The selection of sites for bomb explosions show that such places were public places and more particularly, hospitals which shows the sharpness of the entire conspiracy.

(7-e) Some of the accused like A-67 have also harboured another co-accused and thus played their role. The entire conspiracy was systematically acted upon to achieve the main object of the conspiracy.

(7-f) In conspiracy, no overt act is required to be proved and every conspirator is not required to know the another conspirator and his role.

(7-g) At the stage of framing the charge, only the prima facie case and the material which is able to infer the position of the accused to be in grave suspicion revealing his involvement are sufficient to frame charge. At the stage of framing charge, evidence need not to be appreciated or evaluated like a mini trial, a strong suspicion is sufficient to frame the charges.

(7-h) The Special Criminal Application arising from the order rejecting to discharge the original accused No.29 is sufficiently guiding that the present application needs to be rejected.

(7-i) In the first charge sheet, who have been shown as absconding accused 52, 45 and 48 are respectively accused

No.65, 66 and 71. The case against A-67 is that of harbouring other accused.

(7-j) It is settled position of law that, everyone need not to take an active part in the criminal conspiracy. It can be inferred by necessary implication, the statements of the secret witnesses PW-A to Z, certain panchnamas wherein, the accused themselves are showing the place of offence, the panchnamas drawn at the instance of the co-accused, identification of the co-accused by the accused etc. are all clearly involving the four accused hence they cannot be discharged.

(7-k) The statement of witness P.D. Anilkumar S/o. Damodaran clarifies that in December, 2007, a group of 30 persons came to the farm, stayed there in tents, used binoculars, had different coloured flags on their tents, who all stayed there for 3 to 4 days, are all tallying with the camp which is mentioned as 'training camp'. The description of the activities in the camp goes to show that it was a terrorist training camp.

(7-l) The statement of G. Raju who handed over the original pages of the register of the hotel viz. Shree Hari Tourist Home, also supports the prosecution case.

(7-m) The statement of K.A. Fakruddin, who is owner of hotel Everest Tourist Home, the entries of occupants for the month of December, 2007, the seizure of registers by the Karnataka Police, are the supporting documents.

(7-n) The statement of B. Viju, the register taken from Shree Hari Tourist Home where the name of the co-accused is shown, the statement of V.K. Sumesh, operator of the shop named as Sagarika Cold Drinks and Stationery, shows the probability of the prosecution case to be true.

(7-o) The report of the F.S.L. wherein, potassium chlorate, aluminum powder and sulfur were detected in item Nos.1 to 8 is also, prima-facie bringing on record the seriousness and gravity of the case.

(7-p) The conduct of the accused, as emerges from the different panchnamas that they knew the place of camp, the place where different trainings were imparted, the place of their staying, the place of having offered Namaz, the railway station where they got down, the route from where they passed, etc., are all clearly suggesting the clear, direct and complete involvement of the accused with the knowledge about the conspiracy in the crime with its details.

(7-q) Admissibility of the panchnama u/s.27 of the Indian Evidence Act is different from noting the conduct of the accused, as emerges from the panchnama.

(7-r) Discovery may not be admissible but, conduct of the accused is admissible.

(7-s) Knowledge of the accused about the place of the camp, the activities, the kind of the training, etc. is pointing to the involvement of the accused.

(7-t) Pointing the place and identity of the co-accused is clearly connecting the accused with the inference of his complete meeting of mind with the other co-accused.

(7-u) If many accused are showing the same place that does not change the weightage of the conduct of the accused.

(7-v) The accused were needed to change their names and to take fake names, which itself is a speaking evidence.

(7-w) Sec.80 of the Indian Evidence Act is suggestive that at this juncture the material produced by the prosecution needs to be treated as true.

(7-x) The confession of the co-accused is a weak type of evidence and no value can be attached to it, is the submission which needs to be seen with the aspect that this is not the only evidence against the accused and that at this stage, even grave suspicion is enough to frame the charge.

(7-y) The submission that the confession of 15 accused were retracted has no merit since even on the retracted confession, accused can be convicted. At present juncture, retraction need not be appreciated. Only grave suspicion about the involvement of the accused is sufficient to frame charge.

(7-z) The submission that there is no material against the accused to prove their membership of a banned organization viz. SIMI, is of no worth for the reason that in the kind of the cases where criminal conspiracy has been made base of the

prosecution case, the fact and circumstances in which judicial inference can be drawn is sufficient, as, direct evidence is seldom available. The similarity in behaviour, no explanation for knowing co-accused and the places where terrorist training were imparted, presence and participation in the camps, are sufficient material for grave suspicion about the involvement of the accused in the crime.

(7-aa) The Court has to consider whether is there any material to proceed further from the fact or not. Probable consequence from the material can be drawn in this case hence, charge can be framed.

(7-ab) It needs a note that none of the accused have been discharged in the past and most of the orders rejecting the discharge applications have not been challenged and hence, those orders passed by the learned predecessor judge for the co-accused have attained finality.

(7-ac) In the fact of the case, it can prima-facie be inferred that the training camps were arranged wherein, certain accused have attended, participated and have even addressed the gathering.

(7-ad) The purchase of material, purchase of vehicle, training and preparation of bomb, the left over material which was sent to the F.S.L. are all suggestive of having incriminating material on record which involve the accused who have preferred the present discharge application.

(7-ae) There existed prima-facie case against the

involvement of all the four accused.

(7-af) Even if the abscondence of the accused is not used as circumstance, then also the very act of identification of the co-accused by the accused is a speaking evidence.

(7-ag) This becomes a case where there is grave suspicion about the active involvement of the four accused and about their close connection with the co-accused. The close connection of the co-accused is itself a prima-facie strong evidence against the accused. The circumstance and the conduct of the accused of identifying the co-accused is also a speaking evidence. At this stage the Court is only required to ascertain existence of prima facie case against the accused. On the face of the record, the prima facie case is clearly found to have been existed against all the accused. That being so, this court is of the opinion that the charge against the accused needs to be framed and that, this cannot be termed to be a case to discharge the four applicants-accused.

(8) It is worthwhile to enlist as to what material involves which of the accused.

Common :

- Traveler's register of Shree Hari Tourist Home.
- Correspondence and F.S.L. report showing detection of potassium chlorate, aluminum powder and sulfur in the collected exhibits.
- Identification of the place of the terrorist camps by different co-accused.

- The panchnama of the site of terrorist training camp at Wagamor shown by A-13 dated 19/11/2008.
- Test identification parade by PW Anilkumar at Kotayam where A-10 was identified.
- The statements of the secret witnesses.

Over and above general material, specific material for A-65 - Mohammad Yunus @ Umar @ Khalid, son of Mohammad Shabbir, Ujjain, M.P.

- (1) Statements, of PW, P.D.Anilkumar, son of Damodaran dated 13/01/2010 and 19/11/2008, of Beena Salim w/o. K. Salim dated 19/11/2008, of G. Raju dated 20/11/2008, of K.A. Fakruddin s/o. K.M.Aliyar dated 20/11/2008, of B. Viju s/o. P.V. Bhaskaran dated 21/11/2008 and of V.K. Sumesh S/o. Ramu dated 21/11/2008.
- (2) The panchnama dated 13/01/2010 wherein PW P.D. Anilkumar has identified 26 photographs of the persons who have attended the camp. In this very panchnama A-65 has also identified 21 photographs.
- (3) Panchnama dated 13/01/2012 wherein, A-65 has shown the place of camp at Wagamor.
- (4) A-65 shown as absconding in first charge-sheet at Serial No.45.

Over and above general material, specific material for A-66 - Mohammad Shafiq @ Dadabhai @ Thakur @ Rafiq @ Ali Son of Abdul Bari Ansari, Ujjain, Madhya Pradesh.

- (1) Confessional Statement of A-2 (As accused A) under Section 164 of Cr.P.C.
- (2) Statement of Star Witness "C", dated 27/08/2008 and of 24/11/2009.
- (3) A-66 has been shown as absconding at Serial No.52 in Criminal Case No.265/2008 and Sessions Case No.38/2009.

While the first charge was framed, he was arrested hence has not been shown in the first charge as absconding accused.

- (4) Proceedings under Section 70 of Cr.P.C. has been carried out against A-66 on 14/11/2008.
- (5) The panchnama dated 24/11/2009, A-66 has shown the inn he and co-accused resided, the dargah, site where tent existed, route from Ahmedabad to Pavagarh, site of training imparted particularly training of bathing, biking, drawling, swimming, firing, rope walking etc.

In this panchnama, Mujavar of the mosque identifies A-66.

- (6) Photo identity panchnama dated 15/06/2012, accused Mohammad Abrare has identified this accused seeing his photo at photo Sr.No.9.

Case of Mohammad Abrare is yet not committed.

Over and above general material, specific material for A-67 - Hasib Raza @ Shamimbhai S/o Firdos Raza Mohammad Siddique Saiyad.

- (1) This witness has harboured and sheltered absconding accused A-11 named as Abdul Shubhan @ Taukir and present accused A-27.
- (2) The Statement of Star Witness - Z dated 09/08/2010 shows harbouring by the accused of A-11 (Absconding) and present accused A-27.
- (3) The Statement of Nadim Ahmed S/o. Hafiz Ansari dated 01/08/2010 wherein absconding accused No.11 is mentioned as the person whose job was arranged and who was harboured by A-67.
- (4) The Statement of Gulam Sarvarkhan S/o. Mumtazkhan dated 02/08/2010 establishes identity of absconding accused Abdul Shubhan @ Taukir (A-11) who was harboured by A-67.
- (5) The Panchnama dated 01/08/2010 where PW Nadim Ahmed identifies photo of absconding A-11 as one of the accused who was sheltered at the residence of PW Nadim at the instance of A-67.
- (6) Panchnama dated 02/08/2010 in which PW Gulam Sarvarkhan identifies photo of A-11 as the one who was sheltered or harboured.

(7) Order of Hon'ble the High Court of Gujarat in Criminal Misc. Application No.3807/2012 for the application of bail by A-67.

(8) Correspondence of the crime branch dated 21/07/2010 and 26/07/2010.

Over and above general material, specific material for A-71 - Mohammad Habib @ Habib Falahi @ Mohammad Taiyab, Azamgarh, Uttar Pradesh.

(1) Confessional Statement of A-2 dated 14/11/2008.

(2) Panchnama by which other accused have shown the place of Wagamor - the site where terrorist training was imparted.

(3) Panchnama dated 02/02/2012 by which photos of co-accused A-10, A-15, A-59 and absconding accused A-11 have been identified by this accused.

(9) Moreover, following elaborated points are worthwhile to be considered for A-65 which reveals his involvement in the crime.

[a] The statement of P.D.Anilkumar S/o. Damodaran dated 13/01/2012 read with panchnamas of the same date, involves A-65. The fact that the place of the Wagamor terrorist camp was shown by the accused, witness P.D. Anilkumar has identified the photographs including of the accused as one of the persons who was present in the Wagamor camp, are itself self-speaking.

- [b] The statement of Bina Salim wife of K. Salim was relied upon submitting that from this statement, it is clear that the witness who is looking after her hotel at Kerala is a small refreshment parlour, tourist used to come to her hotel while visit at Wagamor. This shows as to the site of Wagamor is remotely situated isolated place.
- [c] The panchnama dated 19/11/2008 is suggesting that the co-accused shows the place of the terrorist camp at Wagamor where a camp was organized, he narrates and shows the place where firing was practiced by the accused and the co-accused, the rock where the accused and the co-accused stood for taking aim for firing, the site where the tents were erected, the lake where swimming practice was done, the place where big rope between the two pine trees was tied up for crossing the rope daily. These all, prima facie reveal the terrorist training camp to have been held as per the prosecution case.
- [d] PW P.D.Anilkumar states that he was present during December, 2007 at Wagamor when the camp was organized. This witness has seen some people constructing the tents and to have stayed there, he identified the photographs of certain persons. This witness was working near the place of camp, he has seen many camp attendants during the period. He was shown certain photographs and he has identified the photographs of accused including that of this accused. He has identified about 26 photographs of different accused

who, according to the witness, have attended the Wagamor camp. This aspects prima facie probabalise the prosecution case.

- [e] A panchnama by which A-65 has identified 21 photographs is on record, this shows the conduct of the accused and his involvement in the crime, his intimacy with the co-accused, his knowledge about the activities of the co-accused and in all, this is inferential material to infer that the accused had meeting of mind with his co-accused.
- [f] A-65 was present when another panchnama was drawn. In this panchnama the accused tells about how they came to Ernakullam station by train alongwith the co-accused and reached to Wagamor. This accused has shown the place of constructing the tent, the place where they have stayed for 3 days, the place where practical training of making chemical bombs was given, the rock where the tent was erected, the place where firing was practiced alongwith the co-accused, the activities done in the camp were also narrated by the accused including swimming, rock climbing, biking etc., the road was shown where biking was practiced, the lake where swimming was practiced, the place where thick rope between the two trees was tied and the practice of rope crossing was done, the place where they had bath, they took their lunch, etc. and the place where they had halted viz. the accused and the other co-accused had halted.

(10) Moreover, following elaborated points are

worthwhile to be considered for A-66:

- [a] As far as A-66 is concerned, the statement of the star witness 'C' read with confession of the co-accused (A-2), the fact of the code name of the accused as 'Ali', the kinds of the trainings described therein, etc., prima-facie show involvement of the A-66.
- [b] Star witness 'C' in his statement dated 24/11/2009 identifies the accused as the person who resided in inn and to have been involved in the activities carried out in the forest.
- [c] The statement of star witness 'C' dated 24/11/2009 shows the active involvement of the A-66 in securing the staying accommodation at the site of the camp along with his identification.
- [d] The proceeding u/s.70 of the Cr.P.C. had also been initiated against this accused.
- [e] The photograph of the accused was identified by the co-accused, the panchnama of the place of second terrorist camp with the route from Ahmedabad to Pavagarh is also involving the accused vide the panchnama dated 15/06/2012.
- [f] The confessional statement of the co-accused wherein the kind of training, the place of training, the names of co-accused etc. have been given. Star PW-'C' has stated through his two statements before the police that in

January, 2008 certain Muslim boys had stayed in one Dargah at the area. This also shows prima-facie genuineness of the prosecution case.

- [g] The star witness has also identified A-66 as a person who was present in the camp at Halol in January, 2008.
- [h] A-66 has shown the place of the second terrorist training in presence of star PW 'C'.
- [i] A panchnama has been drawn wherein, A-66 is showing the place where, a terrorist training was imparted and where, he remained present. As reveals from this panchnama, in January, 2008 in the forest at Halol, terrorist JEHADI training was organized where, the accused alongwith the co-accused were imparted training, where, the accused came from Indore by train alongwith the co-accused and got down at Baroda Railway Station, from there he was taken to the camp at Halol. He described the kind of training he received at the camp. The accused shows the mosque where, he has offered his Namaz, the inn where he resided with the co-accused, the priest of the Dargah (Muzavar) also identifies the accused, he shows the place where, in the forest they had their tent, the place where he took bath, the place where he took training of drawling, swimming, firing with the help of air-gun, walking on the rope, biking, etc. The terrorist training is stated to have been taken for three days in January, 2008.
- [j] The proceeding u/s.70 of the Cr.P.C. had also to be carried

out against the accused.

These all cumulatively show the involvement of A-66.

(11) Moreover, following elaborated points are worthwhile to be considered for A-67:

- [a] A-67 is involved in harbouring the co-accused which shows that he too is connected with the criminal activities and is a part of criminal conspiracy hatched.
- [b] On perusal of statement of star PW 'Z', it is clear that this accused had lion contribution in harbouring wanted accused-11 and A-27 being tried. This fact is also supported from the statements of Nadim Ahmed and Gulam Sarvar Khan.
- [c] The involvement of this accused in the crime is also getting support from photo identity panchnamas dated 01/08/2010 and 02/08/2010.
- [d] The order passed by Hon'ble the High Court in Cr.M.Ap. 3807/12 and the correspondence of the Crime Branch prima facie, clearly prove thorough involvement of this accused in the crime.

(12) Moreover, following elaborated points are worthwhile to be considered for A-71:

- [a] Taukir is the main conspirator and A-71 has been proved to be very closely associated with the said Taukir who

travels alongwith him.

- [b] A-71 has been charged as absconder who is also shown in all the charge sheets as an absconding accused. A-71 was present near Wagamor. The connection between absconding main conspirator Taukir and A-71 is too obvious since, they had come together and they had gone together which shows their complete involvement in the crime.
- [c] In the documents produced by the applicant, if Falai name is not written then that does not mean that the involvement of A-71 is doubtful. Even if a surname has not been used in the passport of A-71, it can be otherwise shown by the Prosecution.
- [d] The confessional statement of the co-accused as accused 'A' is on the record. If this statement is seen, then it is clear that the accused was present at the Wagamor where terrorist training camp was going on. It is clearly revealing that the co-accused and the accused were actively involved in the entire process and were present in the training camp where code names were given, original names were hidden, the training of mountaineering, biking, crawling, swimming, river crossing, shooting, etc. were imparted, where provoking speeches were given, where training of preparing petrol bombs were given, where all present were provoked for JEHAD, for mass killing, etc. The co-accused saw the accused at the Masjid where, they have boarded themselves, the accused left the place for U.P. on 14th,

different accused met there, the need for one such terrorist training camp at Gujarat was talked about there, another training camp at Gujarat at Halol was also organized where also the training like Kerala - Wagamor was imparted. On the basis of Gujarat riots of the year, 2002, lot of provocation was given to the trainees, lectures that those who would be doing JEHAD would get Jannat were delivered, call to take revenge was given, training to prepare petrol bomb and pipe bomb was given, the intentions to do bomb blast was there, provoking Islamic C.D. and a movie named as 'Black Friday' based on blasts was shown to the trainees, which also reveal the prosecution case to an extent that, the accused was actively involved in the terrorist training camp, who came all the way from U.P. to take the terrorist training and who also resided alongwith the co-accused.

[e] A panchnama by which the accused has identified his co-accused is also on the record of the case which panchnama is dated 02/02/2012. The accused was present where, the panchnama was drawn in presence of the two panchas, through the panchanama this accused has identified his co-accused who were present and who have participated in the Wagamor terrorist training camp at Kerala in December, 2007.

(13) The accused has introduced himself in presence of the panchas as Mohammed Habib @ Habib Falia @ Mohammed Taiyab S/o. Abdul Jaiz Shaikh, the address is village Barikhas, Dist. Azamgarh, U.P.

(14) The accused has identified photographs of A-10, A-12, A-15 and A-59 and of absconding accused No.11. This panchnama was drawn on 02/02/2012. Alongwith the panchnama, the photographs of the co-accused who were identified by the accused have been placed on record of the case.

- [a] The act of identifying the co-accused by this accused does not show his mere knowledge or discussion of the plan but, it shows his agreement with the remaining co-accused. This accused has been shown as an absconder in the earlier charge-sheet and the charge.
- [b] The submission that the name of the accused is only Mohd. Habib and not Mohd. 'Falai' is not found with any substance for the reason that, in this case, it is very clearly emerging on record of the case that, the accused involved in the terrorist training camp and other activities were given code names. Secondly, the name of Falai is along with Mohd. Habib. In the panchnama before the panchas, the accused has given his name as Mohd. Habib @ Habib Falai @ Mohd. Taiyab. This is sufficient to prima-facie show the involvement of the accused.
- [c] The conduct of the accused of identifying his co-accused is self speaking and this identification reveals that the accused was a member of the inner group who knew the co-accused so well.
- [d] To examine the submission whether the accused is also known with his name of Habib Falai or not and whether

the accused right from his arrest has been introduced on record as Habib Falai or not, the arrest memo has been perused. On perusal of the arrest memo itself, the name of the accused is found to have been written as Mohd. Habib @ Mohd. Falai. The relatives of the accused have also been intimated about the arrest of the accused on all the three names including two alias names.

[e] The documents produced on record are all official documents viz. passport, election card, etc. wherefrom it can safely be inferred that the official name of the accused would only be shown. On that the alias names are obviously not being shown in the official record. Such documents are passport of the accused, list of the voters alongwith photograph, mark sheets of the accused, student identity card of the accused and election identity card of the accused.

In the humble opinion of this Court, the name of Mohd. Habib alone in such official documents, do not create any suspicion as, it is common and clear that in the official documents there would always be one name and that, alias name would never be there in the official documents.

(15) Considering the above discussion and the citations produced by the learned advocate for the accused, it is clear that the material do not come to the aid of the accused to support his prayer to discharge the accused as prayed for.

[a] As far as A-71 is concerned, in the charge-sheet also the

accused has been shown with his alias name, his role has been shown to be an active member in the criminal conspiracy hatched to do terrorist activities by actively participating in the terrorist training camp arranged by the banned organization SIMI at Wagamor in Kerala in December, 2007. This terrorist training and the conspiracy were hatched to settle the score of Godhra Carnage which took place in the year, 2002 at Gujarat. The accused have participated in serial bomb blast in the city of Ahmedabad and plantation of the bombs at Surat.

The prima facie case against the accused, since clearly stands revealed, the charge against the accused needs to be framed.

(16) In view of the foregoing discussion, the application to discharge the accused needs to be rejected and is accordingly rejected with the following final order.

O R D E R

The present applications to discharge the accused No. 65, 66, 67 and 71 at Exh.678, 679 and 680 filed by the applicants-accused are hereby rejected and are accordingly disposed of.

Pronounced in the open Court today on this 23rd day of January, 2013.

**(Jyotsna Yagnik)
Designated Judge,
Serial Bomb Blast Cases
SIT Courts, Ahmedabad.**