



IN THE COURT OF NIA SPECIAL JUDGE AT GREATER BOMBAY

ORDER BELOW EXH.79

IN

NIA SPECIAL CASE NO.1090 OF 2021

(CNR NO.MHCC02-011048-2021)

SUNIL DHARMA MANE,

(Presently lodged in Taloja Central Prison) ...Applicant/accused no.5

Versus

NATIONAL INVESTIGATION AGENCY,

(FIR RC-01/2021/NIA/MUM) through NIA

Police Station, Mumbai, 7th floor, Cumballa

Hill Telephone Exchange, Peddar Road,

Mumbai-400 026.

... Respondent/Prosecution

**CORAM : HIS HONOUR THE SPECIAL JUDGE,
MCOCA/POTA/TADA/NIA AND ADDL.
SESSIONS JUDGE SHRI A.M. PATIL.**

C.R.NO. : 57.

DATE : 10.11.2022.

Adv. Mr. Ingle along with Adv. Mr.Desai for accused no.5.
Ld SPP Mr. Gonsalvis for NIA/prosecution.

ORDER

(DICTATED IN OPEN COURT)

1. The present application is filed by accused no.5 for discharge and default bail under Sections 227 r/w. 167 of the Code of Criminal Procedure along with provisions of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAP Act').

2. Applicant contended that he joined Maharashtra Police Services in 1995 as Police Sub-Inspector. He was promoted to the post of Asstt. Police Inspector in 2007. In the month of August-2020, applicant was posted in Kandivali Branch, Mumbai as the Unit In-charge of Unit-XI (DCB-CID). Applicant is arraigned as accused no.5 and charged under Section 120B, 201, 302, 385, 403, 465 and 471 of IPC and Sections 16,18 and 20 of the UAP Act. He was arrested on 24.03.2021 and since then, he is in jail.

3. On 18.02.2021, Mansukh Hiran lodged report to Vikhroli Police Station vide FIR no.47/2021 regarding theft of his Mahindra Scorpio vehicle. Applicant contended that he is not named in the said FIR.

4. On 25.02.2021, Gamdevi Police Station lodged FIR no.35/2021 against unknown persons regarding parking of Mahindra Scorpio bearing registration No.MH-01-DK-9945 at Carmichael Road, opposite Shikhar Kunj Building, Mumbai ladened with 20 sticks of gelatin along with a note addressed to 'Neeta Bhabhi and Mukesh Bhaiyya'. The said FIR was lodged under Sections 286, 465, 473, 506(2),120B of the IPC along with Section 4(a)(b)(i) of the Explosive Substances Act, 1908. Applicant contended that he is not named in the said FIR.

5. The investigation in FIR no.35/2021 was transferred to the Crime Branch, Mumbai and it was re-registered as Case no.40/2021. The investigation was handed over to Sachin Waze by the Joint CP (Crime).

6. In the meanwhile, Mansukh Hiran went missing from the night of 04.03.2021 and missing complaint was filed at Naupada Police Station

by his son. Applicant contended that no allegations were levelled against this applicant in the said complaint.

7. In the morning of 05.03.2021, the dead body of Mansukh Hiran was found at the creek area of Reti Bunder at Mumbra and an accidental death report was registered.

8. The wife of Mansukh Hiran namely Smt. Vimala Hiran made allegations against Sachin Waze that he killed Mansukh Hiran. Applicant contended that even in this complaint no allegations were levelled against him.

9. All the above cases were transferred to the ATS, Maharashtra on 06.03.2021. Afterwards, NIA took over the cases and re-registered case bearing no.RC-01/2021/NIA/MUM. On 13.03.2021, the accused no.1 was arrested while the applicant is shown as accused no.5 and was arrested on 23.04.2021.

10. On 22.03.2021, NIA filed an application and took over the investigation of the offence from ATS, Mumbai. On 24.03.2021, NIA filed a report before the Special Court communicating the addition of Section 16 and Section 18 of UAP Act. After investigation, on 03.09.2021, the charge-sheet filed before the Special Court.

11. As per the applicant, the charge-sheet is concerning with three distinct and separate cases as under :-

- (i) The first case is concerning with the theft of Mansukh Hiran's car on or about 15.02.2021 and applicant is noway concerned with this.

- (ii) The second case is placing this car near Antillia with certain gelatin sticks and this is the case considered to be related to the terrorism and applicant is noway concerned with this.
- (iii) The third case is a murder of Mansukh Hiran at the night of 04.03.2021 and this by itself does not amount to any terrorist act.

12. Applicant further contended that Sachin Waze (accused no.1), Pradeep Sharma (accused no.10), accused nos.6 to 9 made conspiracy to kill the Mansukh Hiran and till this stage, this applicant was not in picture.

13. He further contended that it is alleged against him that on 02.03.2021, he was present in the meeting along with accused nos.1 and 10 and that time, Mansukh Hiran had visited there. It is also alleged against the applicant that accused no.1 met the applicant on 02.03.2021 at Chakala, Andheri and white color mobile with benami SIM card was handed over to the applicant by accused no.1. It is also alleged that on 03.03.2021, applicant met accused no.1 at his office in the C.P Compound and returned the said phone. It is also alleged that in the evening of 03.03.2021, accused no.1 met the applicant and handed over another mobile handset and also gave small chit in which registration number of the car in which Hiran was to be transferred, was written. On 03.03.2021, applicant asked for vehicle and changed its number plate on 04.03.2021.

14. Applicant further contended that it is alleged against him that accused no.1 lured Mansukh Hiran on the pretext to take him to safe

place to avoid arrest and then, applicant posing himself as Inspector Tawade and called Hiran at Ghodbunder Road, Thane around 08:30 pm. It is also alleged against him that he met Hiran and drove him in the said borrowed car and reached near Surekha Hotel at 09:15 pm. After some time, red color Tavera came and parked and then applicant told Hiran to give his mobile and get in the red Tavera.

15. Applicant further contended that it is the case of prosecution that in the red Tavera car, the accused nos.6 to 9 killed Hiran and dumped his body in the creek.

16. Lastly, applicant contended that as per the charge-sheet, it is clear that applicant has not committed any offence under the UAP Act and therefore, he is entitled for discharge of the offence under the provisions of UAP Act and for default bail in the offence of IPC.

17. On the other hand, NIA filed its reply and strongly opposed the application. It submitted that initially, case no.35/2021, dated 25.02.2021 was registered at Gamdevi Police Station, Mumbai under Sections 286, 465, 473, 506(2) and 120B of the IPC and Sections 4(a) (b)(i) of the Explosive Substances Act, 1908 against unknown person in a case relating to the recovery of 20 sticks of explosive and threatening note typed written in English, from suspicious Mahindra Scorpio vehicle bearing registration no.MH-01-DK-9945 found parked illegally opposite Shikhar Kunj Building on Carmichael Road, Mumbai. The investigation was transferred to the Crime Branch, Mumbai Police. On 06.03.2021, the case was transferred to ATS, Mumbai. Considering the gravity of the offence, on 08.03.2021, NIA was directed to take up investigation in the said offence. On 20.03.2021, again, NIA was directed by the Government of India to take up the investigation in respect of offence

registered vide FIR no.12/2021 dated 07.03.2021 under Sections 302, 201, 34, 120B of IPC at Police Station, ATS, Mumbai as connected offence. After completing investigation, the charge-sheet was filed before this Court on 03.09.2021 against 10 accused including applicant.

18. It further contended that the accused no.1 induced Mansukh Hiran to place explosive laden SUV on Carmichael Road and tried to convince Mansukh to accept responsibility for placing the same. When Mansukh refused to accept, accused no.1 hatched the conspiracy to kill Mansukh through accused no.10 and 5 with the help of hired killers i.e. accused nos.6 to 9. It further contended that this applicant entered into a well organized conspiracy headed by accused no.1 along with accused no.10 for planning the murder of Mansukh Hiran which was a direct outcome of terrorist act committed by accused no.1 and others. This applicant attended various meetings in C.P. office compound for the said case and played a vital role in hiding the victim Mansukh. On 04.03.2021, applicant used benami SIM card and mobile phone provided by accused no.1 and called Mansukh at Ghodbunder Road. It is also alleged against the applicant that he himself drove white color Polo car by affixing fake number plate procured by him and picked up Mansukh from the vicinity of Suraj Water Park at Ghodbunder Road. On 04.03.2021, applicant handed over Mansukh to the killers. Accused nos.6 to 9 hired by accused no.10 who were already waiting at the predicated spot in red color Tavera vehicle having registration no.MH-14-DN-2190. Applicant tried to fabricate evidence by taking over the mobile phone of the victim Mansukh before handing over the victim to the hired killers at Ghodbunder Road, Thane and thereafter, switched off the said mobile phone at location far away from the place where the Mansukh was handed over.

19. The learned Advocate for the applicant argued that till end of February to beginning of March, nobody intended to kill Mansukh Hiran. By beginning of March 2021, when Hiran refused to comply with accused no.1's directives then, the decision to kill Mansukh Hiran was taken. Thus, the conspiracy to kill Hiran was not planned before the act of terror i.e. planting of gelatin sticks and the terror note. He further pointed out statements of witnesses. As per those statements, applicant and accused no.1 met in between 03.03.2021 to 05.03.2021, but, it is not transpired that what happened in those meetings. He further pointed out that applicant was visiting the office of the Commissioner of Police for his personal work. He further argued that even as per the statements of witnesses, on 04.03.2021, applicant arranged for car and took Mansukh Hiran to Thane, where Mansukh Hiran stepped out of this car and voluntarily stepped into another car and therefore, no involvement of the applicant is seen from the story of prosecution.

20. He further argued that as per the case of **Niranjan Singh Karam Singh Punjabi, Advocate Appellant Vs. Jitendra Bhimraj Bijja and others** reported in **AIR 1990 SC 1962**, it is settled that at the stage of discharge the Court is required to evaluate the material and documents on record. The duty is casted on the Court to ensure that those whom the legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law.

21. He also relied on the judgment of the Hon'ble Bombay High Court (Aurangabad Bench) in the matter of **Sachin Namdeo Rathod and others Vs. State of Maharashtra** reported in **2018 DGLS (Bom.) 1950** to contend that Special Court cannot blindly accept the contention of investigating agency in respect of application of provisions of MCOC Act

and it is for the State to make out prima-facie case even at the stage of investigation.

22. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **National Investigation Agency Vs. Akhil Gogoi** reported in **(2021) 6 Gauhati Law Reports 709** to contend that prima-facie it is to be seen whether the accused is guilty of committing a terrorist act within the meaning of Section 15 of UAP Act at the time of granting bail.

23. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Abdulahab Abdul Majid Shaikh and ors Vs. State of Gujarat** reported in **AIR 2007 Supreme Court 2492** to contend that it is for the prosecution to prove that the accused intended to strike terror in the locality without which accused cannot be held liable for terrorist act.

24. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Manjit Singh @ Mange Vs. CBI** reported in **AIR 2011 Supreme Court 806** to contend that a charge under Section 3 of TADA Act proves when prosecution establishes that a terrorist act was committed with intend to awe Government.

25. He further relied on the judgment of the Hon'ble Supreme Court of India in the matter of **Zameer Ahmed Latifur Rehman Sheikh Vs. State of Maharashtra and ors.** reported in **(2010) 5 Supreme Court Cases 246** to contend that offence of terrorist act under section 15 of UAP Act requires some physical acts like use of bombs and other weapons etc., section 2(1)(o) takes in its compass even written or

spoken words or any other visible representation intended or which supports a challenge to the unity, sovereignty, integrity and security of India. The said offences are related to the defence of India and are covered by entry 1 of the Union List.

26. He further relied on the judgment of the Hon'ble Supreme Court of India of **Girdhari Parmanand Vadhava Vs. State of Maharashtra** reported in **1996 AIR SCW 3957** to contend that merely because Mansukh Hiran was alleged to have been killed it does not by itself become an act of terror under Section 15 of UAP Act. The terrorist act in this case was over on 25th or latest on 27.02.2021 and upto that point, applicant was not involved in the said act, even as per the prosecution and therefore, the applicant cannot be charged under the provisions of UAP Act.

27. He further relied on the judgment of the Hon'ble Supreme Court in **State Vs. Nalini** reported in **1999 (5) SCC 253** to contend that act subsequent to the object of offence of conspiracy may tend to prove that the particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy.

28. He further argued that in the present case, the act of terror came to an end on 25th or 27.02.2021 and all subsequent actions unlawful though they cannot be termed as offence under the UAP Act.

29. He further argued that on 02.09.2021, the sanction to prosecute under UAP Act was granted and it suffers because it was not kept before the independent authority for review and recommendation. The report

has to be reasoned and sanction order is passed without application of mind and on this ground also, applicant is liable to be discharged.

30. He further argued that applicant had filed an application under Section 167(2) of the Cr.P.C. and it was pending till filing of present charge-sheet. On 27.09.2021, the said application was withdrawn with liberty to file it at an appropriate stage and therefore, the applicant is asking for the relief under the provisions of 167(2) of the Cr.P.C.

31. The learned SPP Mr.Gonsalves pointed out the statements of Meet Mansukh Hiran, Vinod Hiran and other witnesses. He argued that the statements of those witnesses are highly crucial and relevant for establishing and proving the case of the prosecution. He also argued that there is sufficient evidence on record to establish that accused no.1 had called Mansukh to his office chamber from 27.02.2021 to 03.03.2021 to persuade him to take blame of the crime incident dated 25.02.2021. He further argued that murder of Mansukh is directly associated with the series of acts related to the crime dated 25.02.2021 and he was the weak link. He further argued that the murder of Mansukh Hiran is the culmination of the larger conspiracy as hatched by accused no.1, 10 and this applicant being a continuing offence as well as connected offence. He further argued that all the incriminating incidents are not the coincidences rather those show availability of strong evidences against the accused including applicant.

32. Ld SPP Mr. Gonsalvis relied on the judgment of the Hon'ble Supreme Court of India in **Onkar Nath Mishra and ors Vs. State (NCT of Delhi) and another** reported in **2008 Cri.L.J. 1391** to contend that at the stage of framing charge, the Court has to prima facie consider whether

there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient are not for convicting the accused.

33. He further relied on the judgment of the Hon'ble Gauhati High Court in **Oinam Moniton Singha Vs. National Investigating Agency in Criminal Appeal no. 189 of 2011 dated 09.10.2012** to contend that it is not necessary that the person must intend to aid a terrorist act in order to be held liable for an offence under Section 18 of the UAP Act; it would be sufficient, for the purpose of attracting section 18, if the prosecution is able to prove that an accused had the knowledge that his act or omission would facilitate the commission of a terrorist act.

34. He further relied on the judgment of the Hon'ble Supreme Court of India in **Asim Shariff Vs. National Investigation Agency in Criminal Appeal no.949 of 2019 dated 01.07.2019** to contend that court has to arrive to a conclusion that there is prima facie material of conspiracy among the accused persons giving rise to sufficient grounds of subjective satisfaction of prima facie case of alleged offences of conspiracy being hatched among the accused persons and truth and veracity of such conspiracy is to be examined during the course of trial.

35. Perused application, say and charge-sheet. Upon perusal of charge-sheet, it is seen that the Police have recorded statements of relevant witnesses. In the statement of Meet Hiran, he narrated to the Police that his mother told him that accused no.1 had asked Mansukh to get arrested for 3 to 4 days and thereafter, accused no.1 would get him released. Thereafter, in the evening, around 07:45 pm, Meet went to shop with tiffin for his father Mansukh. Mansukh told him to stay in the

shop as he is going to Ghodbunder to meet Police Officer Tawade (false name used by this applicant, as per his disclosure statement).

36. In the statement of Balmukund Soni, he narrated to the Police that on 04.03.2021, in the evening about 08.30 pm, Mansukh had received one call on his mobile. Mansukh told him that he is going to Ghodbunder to meet an officer.

37. In the statement of Vinod Hiran, he narrated to the Police that accused no.1 had advised Mansukh to get arrested for 2 to 3 days and then, he would get him released on bail.

38. In the statement of Ganesh Pawar, he narrated that on 05.03.2021 at about 12:30 to 13.30 hours, this applicant had come and met accused no.1.

39. In the statement of Joseph, he narrated that in the month of February and March-2021, Sunil Mane had come to Office of Commissioner of Police.

40. In the statement of Upendra More, he narrated that on 03.03.2021, this applicant had instructed his staff to deliver his personal bag to his home.

41. In the statement of ACP Alunkure, he narrated that on 03rd or 04th and 05th March, 2021, applicant visited to the office of Commissioner of Police and met accused no.1.

42. In the statement of KW-3, he narrated that on 03.03.2021, applicant gave order for fake number plate with registration numbers starting with MH-01, MH-02 and MH-04. On 04.03.2021, applicant demanded one number plate of having Gujarat registration. He further narrated that as per the directions of the applicant, the staff removed original number plate of white colored Volkswagen Polo vehicle and affixed the fake number. On 09.03.2021, the said Polo vehicle was returned by one witness from Kandivali Police Station with the Sunfilm removed. Later as instructed by another witness, he affixed the Sunfilm and original Number plate and returned the same to its owner.

43. In the statement of Sameer Gawkar, he narrated that on 03rd March at about 11:30 am, accused no.1 came in the office. At about 12:30 pm, Mansukh and Vinayak Shinde at 01:00 pm, came in the CIU office. Mansukh met accused no.1 and left the office at about 02:15 pm. After meeting with accused no.1, Vinayak Shinde left office at 04:00 pm. Again, Mansukh came back to CIU office at 06:00 pm and met accused no.1 and left the office at 06:45 pm. He also narrated that on that day, this applicant also visited to CIU office along with DCP Akbar Pathan and Mahesh Shetty (Bar owner). He also narrated that this applicant visited to the office on 05.03.2021 at about 12:30 to 01:30 pm and met accused no.1. He also narrated that accused no.1 and this applicant went to meet CP, Mumbai and came back at 03:00 pm for lunch.

44. In the statement of Vimala Hiran, she narrated that accused no.1 and other two accused hatched conspiracy and killed Mansukh since he was not ready to take the blame of crime dated 25.02.2021.

45. Protected Witness KW-4 narrated that on 03.03.2021, applicant demanded Volkswagen Polo vehicle for 2 to 3 days on the pretext that vehicle of his wife has been given for servicing and accordingly, the vehicle was delivered. It was parked in the building of the applicant and wife of applicant was away and therefore, keys of the car could not be obtained and therefore, it was returned on 10th March.

46. Protected Witness KW-5 narrated that on 03.03.2021, applicant called him on WhatsApp and asked for arranging small vehicle for his wife. He brought the vehicle to the applicant and then, applicant instructed him to arrange fake number plates of MH and GJ passing. Accordingly, he arranged the same and then applicant removed original number plate and fixed the duplicate number plate. He also narrated that the applicant was using fake number plate for his Creta car.

47. Protected Witness KW-6 narrated that on 02.03.2021, applicant asked him about the availability of heavy material/object viz. iron rod etc. in the store room, so as to use it for the purpose of tying it along the body of the gangster while doing encounter. On 03.03.2021, applicant gave him a white colored smart phone (Intex Company handset) and asked to check its condition and fixed the problem, if any. Applicant had specifically told him not to go to Mumbai. At about 02:15 pm, applicant gave WhatsApp call and called him in CP office compound along with the said device and charger. Accordingly, he went there and handed over the said white mobile handset and charger to accused no.1. He further narrated that on 04.03.2021 at 05:30 pm, applicant inspected him to attend the calls on his mobile and in case, he did not return by 08:30 pm then to send all his bags, his phone and Creta back to his home. Applicant did not return by 09:00 pm and

therefore, he delivered his bag, phone and Creta at the residence of applicant and handed over the keys of Creta to the wife of the applicant.

48. Protected Witness KW-7 narrated that on 03.03.2021, applicant called him and told that he would be visiting the said area on 04.03.2021 and would require a driver and alternate vehicle to travel back to Mumbai. Applicant also told him that he will be leaving his car near the office. On 04.03.2021, applicant made WhatsApp call to him and gave reminder again. Accordingly, he sent his car at about 10:30 pm with another witness, who dropped the applicant at his residence. He also narrated as per the instructions of the applicant the black sunfilm of the Polo car was removed and fixed fake number plates.

49. Hemal Nandu narrated that on 03rd and 07th March applicant called him and asked to arrange the driver to collect car and remove sunfilm of the car as instructed by the applicant.

50. Prashant Dhage narrated that on 04.03.2021, he was present in the office and he did not see applicant during evening time.

51. Avinash Shinde narrated that the applicant left Kandivali Unit at 12:30 pm on 04.03.2021 without taking his vehicle.

52. KW-8 narrated that in the first week of March-2021, he went and received applicant. Applicant gave directions to him to take vehicle. While sitting in the vehicle, applicant scolded him for coming late. He also brought applicant at his home at 01:00 am.

53. Upon perusal of statements of witnesses, it is clear that prima-facie involvement of this applicant is seen in this case. It is also seen that prosecution has material to prove conspiracy between the accused and its culmination in the murder of Mansukh by accused No. 1 along with the co-accused including the applicant also. Apart from the statements of witnesses, the prosecution has incriminating evidence such as call detail records of mobile phone used by accused. Statements of protected witnesses further show the presence of this applicant along with accused No. 1. It is also seen from the charge-sheet that Mansukh was killed by the accused because of crime dated 25.02.2021. It is the basic story of prosecution that the act of parking of explosive laden Scorpio vehicle of Mansukh and thereafter murder of Mansukh was a well planned act involving high-end criminal conspiracy which was executed by the accused with an intent to strike terror.

54. In the judgement of Hon'ble Gauhati High Court in **Oinam Moniton (Supra)**, it is held that if the prosecution is able to prove that an accused had the knowledge that his act or omission would facilitate the commission of a terrorist act even not intended by the accused, then also he is liable for an offence under section 18 of the UAP Act. So far as knowledge is concerned, it would come on record after recording the evidence by the prosecution.

55. The learned advocate for the applicant relied on the judgment of Hon'ble Supreme Court in **Giridhari (Supra)**. In this case, the fact was that one Vaibhav was killed for ransom. But, in the present case in hand the vehicle was parked, laden by gelatin in front of the house of Mukesh Ambani with one note. It was threatened that in case of failure to pay amount the gelatin would be sent connected next time. It is seen from

the prosecution story that the said act of the accused is nothing but terrorist act. These facts differentiate the judgment in case of **Giridhari (Supra)**. Even, the facts of other cited judgments are different than the present case in hand and therefore, they are not applicable with due respect. The act of applicant no.5 cannot be segregated at this juncture. Without leading evidence, it cannot be concluded that applicant no.5 had no knowledge about the act of other accused in respect of incident dated 25.02.2021. Thus, the application is devoid of merit and needs to be reject. Hence, the following order :-

ORDER

Application (Exh.79) is rejected and disposed off accordingly.

DATE : 10.11.2022



(A.M. PATIL)
SPECIAL JUDGE
MCOCA/POTA/TADA/NIA
AND ADDL. SESSIONS JUDGE
GREATER MUMBAI.

Dictated and typed on : 10.11.2022.
Signed on : 10.11.2022.

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"

DATE : 10.11.2022, AT 05.35 P.M.

UPLOAD DATE AND TIME

M.K. SAKHARKAR
STENOGRAPHER GRADE-I
NAME OF STENOGRAPHER

Name of the Judge (with Court no.) : SHRI A.M. PATIL. C.R.NO.57.
Date of pronouncement of judgment/order : 10.11.2022.
Judgment/order signed by the P.O. on : 10.11.2022.
Judgment/order uploaded on : 10.11.2022, AT 05.35 P.M.