

IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03,
SHAHDARA, KARKARDOOMA COURT, DELHI

Amitabh Rawat
विशेष न्यायाधीश (एन.डी.पी.एस.)
Special Judge (N.D.P.S.)
अतिरिक्त सत्र न्यायाधीश-3
Additional Sessions Judge-3
शाहदरा, कर्करदूमा न्यायालय, दिल्ली
Shahdara, Karkardooma Courts, Delhi

CNR No. DLSH01-005147-2020

SC No. 163-2020

FIR No. 59/2020

PS- Crime Branch, Delhi (Investigated by Special Cell)

U/S. 13/16/17/18 UA (P)Act, 120B r/w 109/114/124-A/
147/148/149/153A/186/201/212/295/302/307/341/353/395/419/420/427/435
/436/452/454/468/471/34 IPC &

Section 3 & 4 Prevention of Damage to Public Property Act, 1984
and Section 25/27 Arms Act

State Vs. Tahir Hussain & Others

02.03.2021 (Through Webex).

Present : Sh. Amit Prasad, Ld. Special Public Prosecutor for the State
alongwith Investigating Officer(I.O)/Addl. DCP Sh. Alok Kumar.

- 1) Accused Khalid Saifi produced from Jail no.12 from
Mandoli Jail alongwith Ld. Counsel Ms. Pravita Kashyap.
- 2) Accused Isharat Jahan @ Pinki produced from Jail no.16
from Mandoli Jail with Ld. Counsel Sh. Gaurav Dalal & Sanawar Jahan.
- 3) Accused Meeran Haider produced from Jail no.8 from Tihar
Jail alongwith Ld. Counsel Sh. Saransh Gupta.
- 4) Accused Tahir Hussain produced from Jail no.3 from Tihar
Jail alongwith Ld. Counsel Sh. Rizwan.

Contd.....2

5) Accused Gulfisha @ Gul produced from Jail no.6 with Ld. Counsel Sh. Sanawar.

6) Accused Shafa Ur Rehman produced from Jail no.1 from Tihar Jail alongwith Ld. Counsel Sh. Amit Bhalla.

7) Accused Asif Iqbal Tanha produced from Jail no.4 from Tihar Jail alongwith Ld. Counsel Sh. Siddharth Satija.

8) Accused Shadab Ahmed produced from Jail no.13 from Mandoli Jail alongwith Ld. Counsel Sh. Shivam Sharma.

9) Accused Natasha Narwal produced from Jail no.6 from Tihar Jail alongwith Ld. Counsels Sh. Adit S. Pujari.

10) Accused Devangana Kalita produced from Jail no.6 from Tihar Jail alongwith Ld. Counsels Sh. Adit S. Pujari & Ms. Tusharika Mattoo.

11) Accused Tasleem Ahmed produced from Jail no.14 from Mandoli Jail with Ld. Counsel Sh. Sanawar.

12) Accused Saleem Malik @ Munna produced from Jail no. 13 from Mandoli Jail with Ld. Counsel Sh. Salim Malik.

13) Accused Mohd. Saleem Khan produced from Jail no.13 from Mandoli Jail with Ld. Counsel Sh. Mujib-ur-Rehman.

14) Accused Athar Khan produced from Jail no.4 from Tihar Jail with Ld. Counsel Sh. Akash Arora.

15) Accused Safoora Zargar is on bail with Ld. Counsel Sh.

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Ritesh Dubey.

16) Accused Sharjeel Inam produced from Jail No.1 from Tihar Jail with Ld. Counsel Ms. Surbhi Dhar.

17) Accused Umar Khalid produced from Jail No.2 from Tihar Jail with Ld. Counsel Ms. Rakshanda Deka & Ms. Sanya Khan.

18) Accused Faizan Khan on court bail.

SI Manoj, SI Surender Sharma, on behalf of Investigating Officer(LO)/Addl. DCP Sh. Alok Kumar, with ASI Raj Bahadur Gill, Pairavi Officer from Special Cell in court.

Sh. Gaurav Dalal, Sh. Ritesh Dhar Dubey, Sh. Burjis Shabir, Sh. Saransh Gupta, Sh. Salim Malik, Ms. Rakshanda Deka, Ms. Shavana, Sh. Sanawar, Sh. Kunal Negi, Ld. Counsels are present in court.

The trial in the present case has been stayed by the Hon'ble High Court of Delhi.

An application has been moved on behalf of accused Devangana Kalita through e-mail seeking copy of 2nd Supplementary charge-sheet filed on 01.03.2021 by the Investigating Agency.

Another application has been moved under Section 227 Cr.P.C on behalf of accused Mohd. Saleem Khan through e-mail seeking discharge of accused from this case.

Sh. Adit S. Pujari, Ld. Counsel for accused Devangana Kalita has submitted that he should be supplied with the copy of the supplementary charge-sheet before the charge-sheet is considered and cognizance taken. It

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was further orally argued that Media already has a copy of the charge-sheet before even the accused persons has got them. It is his further submission that there has been a Media Trial pursuant to which he has been prejudicially affected. He has also shown some clips pertaining to the same. The third limb of his argument is that the investigation is not fair and not all video clips have been investigated. He has played on Webex a video involving police personnel to put across his point. He has further prayed that the court may direct further investigation into all the aspects by the police.

Ld. Special Public Prosecutor has vehemently opposed the application of accused Devangana Kalita and stated that the correct position in law is that copy of charge-sheet cannot be supplied before taking cognizance. He has also submitted that there have been various Media reports in Media outlets trying to create their own narrative, against the police. He has also referred to certain Media reporting. As regards further investigation, it was pointed out that it is still going on till all the perpetrators are apprehended and all evidence collected.

On this, Sh. Adit S. Pujari, Ld. Counsel for applicant has contended that the investigation is not fair and he will be able to raise issues about charge-sheet once it is supplied to him and orders; whether taking or denying cognizance; regarding certain provisions can be taken on the basis of record.

Other accused persons like Umar Khalid, Asif, Sharjeel Imam, Khalid Saifi have also raised the issue of the continuing Media trial and how

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it impacts their right of fair trial and their well-being. Similar anxiety have also been expressed by the other accused persons or their counsels.

Accused Asif has also complained of a continuing headache. Accused Sharjeel has stated that under the Jail Rules, persons accused of UAPA are to be lodged separately from other undertrials. Accused Tasleem and Sh. Rizwan, Ld. Counsel for accused Tahir Hussain has also raised similar issues.

I have perused the charge-sheet and supplementary charge-sheet.

The issue of taking cognizance for the commission of offences under Section 124A/153A/109/120B of IPC was deferred for want of requisite Sanction on 17.09.2020 when cognizance was taken on other offences against 15 accused persons namely Khalid Saifi, accused Isharat Jahan @ Pinki, accused Meeran Haider, accused Tahir Hussain, accused Gulfisha @ Gul, accused Shafa Ur Rehman, accused Asif Iqbal Tanha, accused Shadab Ahmed, accused Natasha Narwal, accused Devangana Kalita, accused Tasleem Ahmed, accused Saleem Malik @ Munna, accused Mohd. Saleem Khan, accused Athar Khan and accused Safoora Zargar. Thereafter, again cognizance for offences under Section 124A/153A/109/120B of IPC was deferred for want of sanction on 24.11.2020 when cognizance was taken of other offences against 03 accused persons namely Sharjeel Imam, Umar Khalid and Faizan.

Now, the requisite Sanction under Section 196 Cr.P.C against

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all 18 accused persons has been received.

The question of supply of supplementary charge-sheet which contains the Sanction also, under Section 207 Cr.P.C to the accused will arise only after the said cognizance is taken.

On the perusal of the record, I take cognizance of the offences under Section 124A/153A/109/120B of IPC against all the 18 accused persons.

Let copy of the supplementary challan and accompanying documents be supplied to all the accused persons in pendrive. It may be collected on 03.03.2021 or 04.03.2021 at 2.00 PM, as per the convenience of Ld. Counsels, from the court.

Let medical report be also called from the concerned Jail Superintendent as regards accused Asif Iqbal Tanha for the next date.

Regarding other issues flagged by the accused persons or their counsels, let the Law Officer and the concerned Jail Superintendents of Tihar Jail appear through Webex on the next date.

During the proceedings, an important question of Media Trial was raised. It is indubitably true that every accused has the fundamental right to free and fair investigation as also trial. Media reporting particularly on the social media remains charged up all the time. Media is free to cover the stories but they must also be conscious of remaining careful and objective in their approach. It is the fundamental right of every person accused of any offence, to be provided the opportunity to defend himself.

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There is a world of difference between an accused and a convict. Though it is not possible to lay down guidelines regarding media coverage, in the present oral application and in the present jurisdiction, yet, in my opinion, there should, at least, always be a disclaimer when reporting, whether it is the version of the police/prosecution or the accused instead of presenting as if it is the order of the Court. Labeling the police as completely unfair or the accused as a convict itself, is not a healthy sign and which impacts the process of criminal justice system. The principle and the tenets of free and fair trial, are sacrosanct and inviolable.

There is also a disturbing trend about the reporting of the exact contents of the charge-sheet before cognizance is even taken or counsels for the accused are provided copies of it. It is one thing to report generally about the charge-sheet but quite another to reproduce it as it is and thus, obviously, the question of leakage would arise. This is grossly unfair and unjustified and the court expects that it would not occur in future.

Put up for scrutiny of documents and further proceedings on 12.03.2021.

Let all the accused persons, who are in JC, be produced through Webex on 12.03.2021.

There was also an application moved by accused Tasleem seeking discharge from the present case.

However, it needs a detail deliberation and as suggested by other counsels, arguments on behalf of other accused persons also. Most

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importantly, the trial has been stayed by the Hon'ble High Court of Delhi. Hence, the application is kept pending.

Copy of this order be e-mailed to all the concerned Jail Superintendents for information and compliance. Copy of this order be e-mailed to all the Ld. Counsels, Ld. Special Public Prosecutor and the Investigating Officer.

Copy be given dasti to the counsels present in the court.



(Amitabh Rawat)

Addl. Sessions Judge-03

Shahdara, Karkardooma Courts/

Dated : 02.03.2021

अतिरिक्त सत्र न्यायाधीश (एन.डी.पी.ए.)
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