

State v. Sheikh Sehzaad & anr
FIR No. 30/2021
P.S Special Cell
U/s 15(1)(a)(iii)(a)/16 UAPA

17.05.2022

Present: Sh. Irfan Ahmed, Ld. Addl. PP for State.
Insp. Anukul on behalf of IO ACP Ved Prakash.
Ms. Sadhna Bhatia, Ld. Counsel for applicant/accused Habibur Rehman.

Briefly to recapitulate: An application for grant of bail has been moved on behalf of applicant/accused Habibur Rehman.

In order to sustain the allegations against the applicant/accused that he is a member of a crime syndicate involved in trading in Fake Indian Currency Notes (FICN), prosecution heavily relies upon the intercepted conversation between the applicant/accused and co-accused Sheikh Shehzad.

Perusal of the record reveals that no sanction order with respect to the said intercepted conversation has been placed on record by the prosecution. Although there is a communication available on record, addressed to the Nodal Officer by DCP; Special Cell, which makes a mention of the order of worthy Union Home Secretary, Government of India, however, the said sanction order (Order No. 14/07/2011-T dated 17.12.2020) of the worthy Union Home Secretary is not available on record. For the past two dates, the matter is being adjourned by this court for want of that sanction order.

Now today, a very hazy and sketchy reply has been filed on record on behalf of Assistant Commissioner of Police, Special Cell intimating the court that the said sanction order has been weeded out. It is informed

that the said sanction order was received by the worthy Deputy Commissioner of Police, Special Cell and upon receipt of the said order, DCP, Special Cell has conveyed the sanction to the Nodal Officer, Vodafone/Idea, Delhi vide communication no. 49732-34/X/M/20/1767/Spl. Cell dated 21.12.2020.

The reply of the ACP, Special Cell is not clear as to if the copy received in the Special Cell has been weeded out or the record pertaining to the original sanction order maintained in the Home Department has been weeded out. The reply is also silent as to how and under what circumstances, copy of the said communication received in the office of Special Cell was weeded out. It is also not clear from the reply as to why the copy of the said sanction order was not placed on record. It is also not clear from the reply as to what communication, if at all any, was received from the office of Union Home Secretary confirming the weeding out of the said sanction order. The reply filed by ACP, Special Cell, unfortunately, raises more queries to be answered rather than help the court resolve the issue with respect to the said sanction order.

The bail application of the applicant/accused Habibur Rehman is lingering on due to the callousness of the investigating agency for the past several dates. This court is required to deal with the sacrosanct right of liberty coupled with the golden principle of presumption of innocence juxtaposed against the seriousness of allegations, enormity of charge and statutory bar u/s 43D of UAPA. This court is not inclined to pass any orders on merits upon the basis of half baked information furnished by the investigating agency, at the same time, the court is quite conscious of the sacrosanct rights of the accused.

In these circumstances, worthy Union Home Secretary, Government of India, is requested to look into the matter personally and apprise this court regarding the status of sanction order No. 14/07/2011-T

dated 17.12.2020.

Worthy Special Commissioner; Special Cell is also requested to look into the matter personally and apprise this court as to under what circumstances, copy of the said sanction order has been weeded out and why the same was not placed on record alongwith the charge-sheet.

Copy of the instant order be accordingly sent to the office of worthy Union Home Secretary, Government of India and Special Commissioner, Special Cell through Insp. Anukul in a sealed cover.

Meanwhile to balance the conflicting interests and to meet the ends of justice, there are two possible course of action available with the Court i.e. Course A: granting interim bail to the applicant/accused Habibur Rehman and Course B: Deferring the matter for another week. Both the courses have been put across to Ld. Addl. PP and Ld. Defence counsel. Ld. Addl. PP opposes Course A and contends that if Course A is adopted, there is every apprehension that accused might either elope or may commit another crime and with respect to Course B, it is submitted by Ld. Addl. PP that the same appears to be more reasonable as another week in jail is not going to make much difference.

Article 21 of Constitution of India proscribes deprivation of liberty sans authority of law. In my considered opinion, every millisecond of unnecessary detention makes a substantial difference and tantamounts to an unwarranted interference with the rights of the accused.

It has been observed by Hon'ble Bombay High Court in the matter of **Dr. P. V. Varavara Rao v. Natinal Investigation Agency & Anr Criminal Appeal No. 52 of 2021 D.O.D 22.02.2021** wherein it has been held :

“...38. Article 21 of the Constitution of India, which guarantees right to life and personal liberty, has been interpreted over the years in various judgments of the Hon'ble Supreme Court and High Courts to read rights of prisoners in the said Article. It has been held that merely because a

prisoner is confined within the four walls of the prison, it cannot be said that he stands denuded of the rights guaranteed under Part III of the Constitution of India. Although, the prisoners stand confined within the prison and, to that extent, stand deprived of their liberty as per procedure established by law, it cannot be said that they cannot invoke myriad shades of rights guaranteed under Article 21 of the Constitution of India...”

Elaborating upon the issue of ' Human Liberty and Role of courts', including the district courts, Hon'ble Apex Court in the matter of **Arnab Manoranjan Goswami v. The State of Maharashtra & ors Criminal Appeal No. 742-744/2020 D.O.D 27.11.2020** has observed as under:-

J Human liberty and the role of Courts

60. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC —or prevent abuse of the process of any Court or otherwise to secure the ends of justice. Decisions of this court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one – and a significant - end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post Independence, the recognition by Parliament of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of

occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. **Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.**

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The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defense against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions.

62. It would be apposite to extract the observations made, albeit in a dissenting opinion, by one of us (Dhananjaya Y Chandrachud, J.) in a decision of a three judge bench in *Romila Thapar vs Union of India*:

“The basic entitlement of every citizen who is faced with allegations of criminal wrongdoing, is that the investigative process should be fair. This is an integral component of the guarantee against arbitrariness under Article 14 and of the right to life and personal liberty under Article 21. If this Court were not to stand by the principles which we have formulated, we may witness a soulful requiem to liberty.”

63. More than four decades ago, in a celebrated judgment in **State of Rajasthan, Jaipur vs Balchand**, Justice Krishna Iyer pithily reminded us that the basic rule of our criminal justice system is bail, not jail’.

The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the ‘subordinate judiciary’. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in

the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground – in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the —solemn expression of the humaneness of the justice system . Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard...

Considering the totality of circumstances, I deem it proper to release the applicant/accused Habibur Rehman on interim bail till next date of hearing subject to his filing personal bond in the sum of Rs. 50,000/- with two sureties each in the like amount subject to satisfaction of this court. Concerned Jail Superintendent be informed accordingly.

It is clarified that instant interim bail order should not be read as an order on merits and the applicant/accused Habibur Rehman shall not claim any benefit on account of this order as this order is only an interim measure to contain the damages on account of investigative agency's apathy and indolence.

Accordingly, list the matter on **27.05.2022** for report of worthy Union Home Secretary and Special Commissioner, Special Cell and arguments on the bail application.

(Dharmender Rana)
ASJ-02, NDD/PHC/New Delhi
17.05.2022