



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1138 OF 2023

Parvez Zubair Vaid .. Appellant

Versus

The State of Maharashtra, through .. Respondent
ACP, ATS Vikhroli Unit, Mumbai

WITH
CRIMINAL APPEAL NO. 219 OF 2024

Faiz Shakeel Bhiwandiwala .. Appellant

Versus

The State of Maharashtra .. Respondent

...

Mr.Mihir Desai, Sr. Advocate with Samsher Garud, Vighnesh Iyer and Dhvani Parekh i/b Jayakar & Partners for the appellant in Appeal No.1138 of 2024.

Mr.Rishi Bhuta with Vivek Pandey, Ashish Dubey, Ujjwal Gandhi, Ankita Bamboli for the appellant in Criminal Appeal No. 219/2024.

Mr.S.V. Gavand, APP for the State.

ACP Satish Gadhave, IO from ATS, Mumbai, present.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 11th JULY, 2024**

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P.C:-

1 The two Appeals are filed by the appellants Parvez Vaid, being arraigned as accused no.1 and Faiz Shakeel Bhiwandiwalla being arraigned as accused no.2 in NIA Special Case No. 153/2023.

The involvement of the accused was contemplated in the wake of registration of offence u/s.17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA Act') and Section 121A and 120B of IPC read with Section 8C, 20, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (for short 'NDPS Act')

2 Learned senior counsel Mr.Mihir Desai & Mr.Rishi Bhuta, representing the appellants have collectively submitted before us that perusal of the charge-sheet, do not contain an iota of material, to establish the accusations levelled against them, particularly, under the provisions of UAPA, a draconian legislation, as well as under the NDPS Act. According to the learned counsel, the material contained in the charge-sheet, do not even remotely connect the appellants with the alleged offences and in the wake of this submission, we have perused the FIR that has resulted into filing of a charge-sheet.

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3 In the wake of the information received by the Assistant Police Inspector in Anti Squad Terrorist Police Station, Juhu, that one Anis Ibrahim, a confidante of Dawood Ibrahim along with his associates are financing several illegal activities in India and they are also associated with other illegal organisations, which set the Investigating machinery rolling and as a result of this, the Anti Terrorist Squad conducted a search in the house of Parvez Vaid, on 2/8/2022. In this process, it was able to seize two mobile phones and he was also questioned.

It is the specific contention of Mr.Vaid, the appellant that he was kept in Juhu ATS unit, illegally overnight, and was shown to be arrested on 3/8/2022.

Mr.Desai, the learned counsel representing Parvez has specifically urged that there is no recovery of any contraband or offending material under NDPS Act from his possession. As far as the other appellant i.e. accused no.2 Faiz Shakeel Bhiwandiwalla is concerned, there is recovery of 600 gms of *ganja* during the search of his premises and no other incriminating material is seized even from him.

4 In the affidavit filed by the Assistant Commissioner of Police, Anti Terrorist Squad, in Criminal Appeal No. 219/2024, it is deposed that during investigation, it is revealed that the accused no.1 with the help of his associates had transferred an amount of Rs.25,000/- to the person who was member of Dawood gang and

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the statement of the said witness has been recorded. It is also alleged that appellant Faiz Bhiwandiwalla was in the habit of ordering Narcotic Drug 'ganja' from abroad to India and used to receive the parcels in the name of his friends. There is also a reference to exchange of some photographs between the two appellants and it is alleged that 'dark net' was used by them for ordering the narcotics through an App "Wicker Me" and the money was paid through 'blockchain' in currency of bitcoin.

5 On the last occasion, we specifically passed an order directing the Public Prosecutor appearing in the matter to justify invocation of Section 17 and 18 of UAPA, and though Mr.Gavand in presence of ACP Satish Gadhave, who is present in the Court, fairly state that there is no material in the charge-sheet, which would justify invocation of Sections 17 and 18, he has extracted some relevant documents from the charge-sheet, to establish the charge under Section 20.

We have carefully perused the said material which is in form of statements of witnesses recorded u/s.164 before the Magistrate as well as the statements recorded u/s.161.

When we perused the said statements, we have noted the reference to an incident, which is alleged to have taken place in the year 2013, when the witness Nasim Shaikh visited Shalimar Hotel, where Muzif Shah was present with his friend Trivedi, Parvez Vaid, accused no.1 and his mother, who were present along



with Marie, Colson and Chillam, and at that relevant time, according to this witness, Marie told him that he and Paulson are persons who belong to 'D' Company and they have been just released on bail, and he should keep this aspect in mind.

Another statement of Kashyap Bipin Barai recorded under Section 164 also refer to Parvez as belonging to 'D' gang. Admittedly, there is no reference to Faiz Bhiwandiwalla, accused no.2 in either of these statements.

6 The statements of Lawrence Peter Amara, Nandkishore Pandey, Mohd. Shoaib, Firoz Nasir Khan, Jaan Mohd Ali, recorded under Section 161 also contain reference to Parvez Vaid as a part of 'D' gang. Admittedly, even in this statement, the name of accused no.2 Faiz Bhiwandiwalla is conspicuously absent.

7 In order to attract the provisions of Section 20 of UAPA, which has prescribed punishment for being a member of terrorist gang or an organisation, it is necessary to refer to the concept of terrorist gang/terrorist organization which has been assigned a definite connotation in Section 2(l) and 2(m) to the following effect:

2(l) "terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

2(m) "terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;

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8 Section 20 prescribe, that any person who is member of the terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with Imprisonment which may extend to Imprisonment for life and shall also be liable for fine.

What is most important to note is the listing of the terrorist organizations and individuals, as contemplated in Chapter VI of the Act, with a power being conferred upon the Central Government to add the name of an organization in Ist Schedule or the name of an individual in IVth Schedule. It is also permissible for the Central Government to add an organization in first schedule, which is identified as terrorist organization in case of a resolution adopted by the Security Council under Chapter VII of Charter of the United Nations or the name of an individual in the fourth schedule to combat international terrorism.

9 A look at the first schedule, which has enlisted the terrorist organisation with specific reference to Section 2(l)(m), 35, 36 and 38(1) would reveal that first schedule has enlisted the organisations, which are terrorist organisations, whereas the fourth schedule with reference to Section 35(1) and 36 have enlisted the name of the individuals, in contradiction to the organisation/gangs.

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10 In the wake of the power conferred on the Central Government, by a notification dated 4/9/2019, Dawood Ibrahim Kaskar with his alias identities, who is accused of running international underworld crime syndicate and being involved in perpetrating acts of terror, promoting religious fundamentalism, terror financing, arms smuggling, circulation of counterfeit currency, money laundering, narcotics, extortion and benami real estate business in India and abroad and being involved in assassination attempts on prominent personalities to create social disharmony and terrorise a common man, and in the wake of he being designated as a global terrorist by United Nations under the United Nation Security Council Resolution, 1267 and being listed in Al-Qaida sanction list dated 3/11/2023 and on the belief that Dawood Ibrahim Kaskar is involved in terrorism, is notified as a ‘Terrorist’ under the UAPA, 1967.

Schedule IV of UAPA hence came to be amended by adding Entry 4 for including Dawood Ibrahim Kaskar with his alias name “terrorist”.

11 A careful reading of the provisions of UAPA, a special enactment for providing effective prevention of unlawful activities of individuals and association and for dealing with terrorist activities, has segregated the activities of an individual, which would amount to a terrorist act on one hand and the activities by the terrorist gang and terrorist organization, on the other.

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12 With a clear definition of terrorist act contained in Section 15, Section 16 prescribe the punishment for committing a terrorist act in the contingency stipulated therein. The distinct provisions in the Statute and in particular, in form of Section 17, 18, 20, 21, 22 are the distinct facets of commission of terrorist act, either by individual or by a terrorist gang or an organization. As far as Section 17 is concerned, it prescribe punishment for raising funds for terrorist act, whereas Section 18 prescribe punishment for conspiracy for commission of a terrorist act or any act preparatory to the commission of terrorist act.

However, since during the course of hearing, the learned APP, on instructions, of the competent Officer has made a categorical statement that there is no material in the charge-sheet, establishing the accusations u/s. 17 and 18, we have not focused upon the said aspect.

However, as far as Section 20 is concerned, which prescribe punishment for being a Member of terrorist gang or organisation, the material on which reliance is placed in form of Section 164 statement, referring to Parvez Vaid as a Member of D-gang, in our view, *prima facie*, it would not attract the offence u/s.20, as by the amendment in Schedule IV, Dawood Ibrahim Kaskar, has been declared as a terrorist in individual capacity, and therefore, any association with him on the pretext that a person belongs to D-gang/Dawood gang will not attract the provisions of Section 20.

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13 Coming to the offence punishable under the provisions of NDPS Act, since admittedly, the charge-sheet reveal that what is seized from accused no.2, is 600 gms of ganja, which definitely do not deserve his incarceration, as the quantity is neither commercial nor intermediate, but is a small quantity, and bar for releasing him on bail under Section 37 of the Act, shall not come in its way. Mere sharing of the pictures of Narcotics or prohibited substance definitely do not attract the provisions of the NDPS Act.

14 In the aforesaid circumstances, since we have noted that the learned Judge who has rejected the application for bail, failed to consider this relevant aspect, the impugned orders cannot be sustained and deserve to be set aside.

Resultantly, Appeal No.1138/2023 and Appeal No. 219/2024 is allowed by quashing and setting aside the orders dated 5/4/2023 and 1/7/2023, respectively. Hence, the following order :-

ORDER

- (a) Appeals are allowed.
- (b) The appellant Parvez Vaid in Cr.Appeal No. 1138/2023 and appellant Faiz Shakeel Bhiwandiwalla in Cr. Appeal No. 219/2024 are entitled to be released on bail on furnishing P.R. Bond to the extent of Rs.50,000/- each with one or more sureties in the like amount.

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(c) The appellants shall mark their attendance on first Monday of every month between 10:00 a.m to 12:00 noon with ATS police station, Kalachowki Unit, and make themselves available as and when required by the Investigating Officer.

(d) The appellants shall provide their current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.

(e) The appellants shall not travel outside the jurisdiction of the Trial Judge without their prior permission and shall also deposit their passport with the Investigating Officer, if any.

(f) The appellants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing the facts to Court or any Police Officer. The appellants shall not tamper with evidence.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)