

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

I.A. No. 03-2022

CNR No. DLSH-01-00-3841-2020

SC No. 132-2020

FIR No. 22/2020

P.S. Crime Branch

U/S. 124A/153A/153B/505 of IPC and

Section 13 of Unlawful Activities (Prevention) Act

State

..... Prosecution

Versus

Sharjeel Imam

S/o Late Akbar Imam

R/o VPO-Kako, PS-Kako,

District-Jahanabad, Bihar.

.... Applicant/accused

ORDER

1. This order shall dispose off the application under Section 437 of the Code of Criminal Procedure (in short, Cr.P.C), 1973 moved on behalf of applicant/accused Sharjeel Imam for grant of interim bail.

2. I had heard the arguments made on behalf of both the parties and perused the record. Written submissions and judgments relied upon by them were also perused.

3. 3.1 It was submitted by the Ld. Counsel for the accused Sharjeel Imam that accused is in custody since 28.01.2020 in the present case. His earlier bail application was heard and dismissed vide order dated 24.01.2022 and the said bail order is under challenge as an appeal before the Hon'ble High Court of Delhi in Criminal Appeal No. 94/22.

3.2 It was contended that during the pendency of the said appeal, the Hon'ble Supreme Court of India, while hearing petitions challenging the constitutionality of Section 124A IPC in WP (C) No. 682/2021 titled as *S.G. Vombatkere vs. Union Of India*, on 11.05.2022 passed certain directions whereby all pending trials, appeals and proceedings with respect to the charge framed under Section 124A IPC were to be kept in abeyance and adjudication with respect to other Sections could proceed if no prejudice is caused to the accused.

3.3 It was argued that thereafter an application under Section 482 Cr.P.C was filed before Hon'ble High Court of Delhi seeking interim bail which was withdrawn on 26.05.2022 with liberty to file an appropriate application before the Special Court.

3.4 It was contended that the earlier dismissal of the previous bail application by this Court on 24.01.2022 was based upon the limitations to grant bail under Section 437 Cr.P.C and the punishment prescribed under Section 124A IPC. Considering the Hon'ble Supreme Court's directions, the hindrances raised in the order dated 24.01.2022 have been obviated. The accused meets the triple test for bail as neither he is a flight risk nor can influence the witnesses or tamper the evidence. He has relied upon following judgments :-

- i) Prabhakar Tiwari vs. State of Uttar Pradesh & Another, (2020) 11 SCC 648;*
- ii) Rajat Sharma vs. State of NCT of Delhi, 2015, SCC OnLine Del 8914;*
- iii) Kanchan Mishra @ Anu vs. State of NCT of Delhi, 2012 SCC OnLine Del 1485 & ;*
- iv) Sanjay Chandra vs. Central Bureau of Investigation, (2012) 1 SCC 40;*

3.5 It was contended by the Ld. Counsel for the accused that all offences except sedition of which accused has been charged carry a maximum sentence of 07 years of imprisonment. Sedition under Section 124A IPC has been put on hold by the orders of Hon'ble Supreme Court of India and Section 13 of UAPA has been wrongly charged against the accused in view of the judgment of Kanchan Mishra (Supra) and thus, it may be disregarded. Considering the non-applicability of Section 13 of UAPA, the position of Section 124A IPC and the fact that accused satisfies the triple test criteria for bail, the present bail application must be allowed and applicant be released on bail.

4. 4.1 Ld. Special Public Prosecutor had opposed the bail application stating that the charges against the accused are serious in nature. It was also argued that there is no direction of Hon'ble Supreme Court of India that all persons accused of offence under Section 124A IPC should be released on interim bail pending disposal of the constitutional challenges to the said Section.

4.2 It was also argued that in the present case, apart from Section

124A IPC, other provisions of law are also invoked including Section 13 of UAPA and trial can proceed without causing any prejudice to the accused by examination of many witnesses.

4.3 It was also argued that it is well settled law that in non-bailable cases, the primary factors the court must consider while exercising the discretion to grant bail are the nature and gravity of the offence, its impact on society and whether there is a prima facie case against the accused. He has relied upon following judgments :-

- i) Rekha Sengar vs. State of Madhya Pradesh, (2021) 3 SCC 729;*
- ii) Prasanta Kumar Sarkar vs. Ashis Chatterjee, (2010) 14 SCC 496;*
- iii) State of U.P through CBI vs. Amarmani Tripathi, (2005), 8 SCC 21 &;*
- iv) Prahlad Singh Bhati vs. NCT of Delhi, (2001) 4 SCC 280;*

4.4 It was contended that since the charges are framed against the accused Sharjeel Imam, the test of prima facie view or reasonable ground to believe that the accused has committed the offence has been answered in a affirmative in favor of the prosecution and against the accused. Importantly, the order on charge though has been challenged but neither any stay of the order has been sought nor granted by the Hon'ble High Court of Delhi.

4.5 It was contended that accused is blowing hot and cold as during hearings of the bail application, he had admitted his speeches as well as published material specifically by way of written submissions. However, when the accused

was put on trial, accused denied every material cited against him including the speeches and published material. This demonstrates the conduct of the accused.

4.6 It was submitted that the nature and gravity of the offence is different from severity of punishment. The gravity of the offence is clearly made out and if required, he can argue again on the merits of the case to show the gravity and the applicability of the relevant provisions of law.

It was, thus, prayed that interim bail application needs to be dismissed.

5. 5.1 In the present case, this court had ordered for framing of charges against the accused Sharjeel Imam under Section 124A IPC, 153A IPC, 153B IPC, 505 IPC and Section 13 of Unlawful Activities of Prevention Act, 1967 vide order dated 24.01.2022.

5.2 On 24.01.2022, this Court had also dismissed the bail application of the accused after considering all the factors.

5.3 Against the order dated 24.01.2022 on bail under Section 437 Cr.P.C and order dated 24.01.2022 on the point of charge, Criminal Appeals have been filed and are pending before the Hon'ble High Court of Delhi.

5.4 The order dated 24.01.2022 is an order on the merits of the case. Ld. Counsel for the accused had argued that Section 124A IPC is punishable with life and same having been put on hold by the Hon'ble Supreme Court of India in

WP (C) No. 682/2021 titled as *S.G. Vombatkere vs. Union Of India*, on 11.05.2022, it may not be considered in the present bail application. The other Sections of IPC carries less sentence and gravity and may be accordingly considered. Moreover, Section 13 of UAPA is not attracted in the present case and the Court may consider judgment of Kanchan Mishra (Supra) on this aspect to see its inapplicability to the present case.

On the other hand, Ld. Special Public Prosecutor had argued that there is no directions from the Hon'ble Supreme Court of India for grant of interim bail in cases involving Section 124A IPC and all Sections of IPC as also Section 13 of UAPA are applicable.

Both Ld. Counsel for accused and Ld. Special Public Prosecutor are willing to argue on the merits of the case involving all the Sections of law.

5.5 In my humble view, there cannot be another bail application by accused and another arguments on the merits of the bail application. Any bail order passed by a Court is a composite order and neither the Ld. Prosecutor nor the Ld. Counsel for accused can dissect or consider it only as regards certain provisions of law. Thus, the bail order dated 24.01.2022 passed by this Court on merits of the case is taken to have considered all the merits of the case and the applicability of Section 124A IPC, 153A IPC, 153B IPC, 505 IPC & 13 of UAPA. In fact, even the charges have been framed against the accused under all these Sections. At this stage, the contention of the Ld. Counsel for the accused that Section 13 of UAPA is not made out and must be disregarded is like revisiting or reviewing the orders on charge and bail dated 24.01.2022 which is neither

permissible nor warranted. The order on charge and order on bail is already a subject matter of appeal before the Hon'ble High Court of Delhi.

Thus, there can only be one bail order on the merits of the case and this Court cannot again pass an order on the merits that too in an interim bail application. Otherwise, by this logic, there can be two bail orders on merits of the case at the same time passed by this Court. The merits of the case cannot be agitated again in an interim bail application in view of the disposal of the previous bail application and orders on charge both dated 24.01.2022.

5.6 It is indeed correct that while considering an interim bail application, gravity of the offence is a relevant criteria. However, interim bail applications can be considered only upon some exigencies or necessities like medical condition and not on the merits of the case as such.

5.7 On the aspect of Section 124A IPC, the relevant order cited is of Hon'ble Supreme Court of India in WP (C) No. 682/2021 titled as *S.G. Vombatkere vs. Union Of India*, on 11.05.2022, wherein it has been held that :-

“....8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

a. The interim stay granted in W.P.(Crl.)No.217/2021 along with W.P.(Crl.)No.216/2021 vide order dated 31.05.2021 shall continue to operate till further orders.

b. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration.

c. If any fresh case is registered under [Section 124A](#) of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

d. All pending trials, appeals and proceedings with respect to the charge framed under [Section 124A](#) of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.

e. In addition to the above, the Union of India shall be at liberty to issue the Directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of [Section 124A](#) of IPC.

f. The above directions may continue till further orders are passed.

5.8 In the aforesaid order, para (d) is relevant for us.

Para d. All pending trials, appeals and proceedings with respect to the charge framed under [Section 124A](#) of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.

5.9 Ld. Special Public Prosecutor had argued that there is no order of Hon'ble Supreme Court of India directing for grant of interim bail pursuant to the said order. This appears to be correct.

In the said order, the pending trials with respect to the charges framed under Section 124A IPC have been kept in abeyance; however,

adjudication with respect to other Sections can proceed if the court is of the opinion that no prejudice would be caused to the accused. Thus, there is no total embargo on continuance of trial in a case involving various offences including Section 124A IPC nor is there any express order for grant of interim bail pending the continuation of the said Writ Petition before the Hon'ble Supreme Court of India.

In the present case, the trial is continuing against accused Sharjeel Imam not only in respect of offence under Section 124A IPC but also for the offence under Section 153A IPC, 153B IPC, 505 IPC & 13 UAPA.

It is correct that some of the witnesses like complainant or the witness who has to prove sanction in respect of Section 124A IPC or the Investigating Officers cannot be examined in view of the order of Hon'ble Supreme Court of India as their examination could cause prejudice to the accused. However, witnesses like Sh. Dharmender Kumar, who has to prove sanction order in respect of Section 13 of UAPA;; or forensic experts or other experts who have to prove their reports can still be examined without causing any prejudice to the accused.

5.10 The contention of the Ld. Counsel for the accused that Section 13 of UAPA is not made out in the present case, is a completely misplaced argument. As stated above, this Court has passed an order for the framing of charge under Section 124A IPC, 153A IPC, 153B IPC, 505 IPC & 13 of UAPA and also dismissed the bail application. The said two orders have been appealed and pending before the Hon'ble High Court of Delhi. How can this court again

give a finding on the issue of the applicability of Section 13 UAPA particularly when the charges are framed vide a detailed order dated 24.01.2022.

6. In view of the above discussion, I do not see any ground to grant interim bail to the applicant/accused Sharjeel Imam. Accordingly, interim bail application under Section 437 Cr.P.C moved on behalf of applicant/accused Sharjeel Imam stands dismissed.

Copy of this order be emailed to the Ld. Special Public Prosecutor, Ld. Counsel for accused as also to worthy Commissioner of Police, Delhi.

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Delhi/23.07.2022