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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4236/2021**

SHARJEEL IMAM

..... Petitioner

Through: Mr.Ahmad Ibrahim Mir, Advocate.

versus

STATE OF NCT DELHI

..... Respondent

Through: Mr. Amit Prasad, SPP for the State
with Ms. Mansi Vats, Advocate along
with Inspector Mintu Singh Gautam.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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26.09.2022

CRL.M.A. 19721/2022

Allowed, subject to all just exceptions.

Application is accordingly disposed of.

CRL.M.A. 19720/2022

1. Bail Application No.4236/2021 has been preferred before this Court on behalf of the petitioner (Sharjeel Imam) for regular bail in FIR No. 242/2019 dated 16.12.2019, under Sections 143/147/148/149/186/353/332/307/308/427/435/323/341/120B/34 IPC [Section 124A and 153A IPC added later], Sections 3 & 4 of Prevention of Damage to Public Property Act (PDPP Act) and Section 25 & 27 of Arms Act registered at P.S. : New Friends Colony, Delhi, against order dated 22.10.2021 passed by the learned ASJ, whereby the application under Section 439 Cr.P.C. preferred on behalf of the petitioner was dismissed.

2. During pendency of aforesaid application for bail, an application has been preferred on behalf of the petitioner Sharjeel Imam under Section 482 Cr.P.C. seeking clarification from this Court that the pendency of the present bail application under Section 439 Cr.P.C. will not come in the way while deciding the application filed by the applicant under Section 436-A Cr.P.C. preferred before the Court of learned ASJ-05, South-East District, Saket Court, New Delhi.

3. Issue notice. Mr. Amit Prasad, learned SPP for the State appears on advance notice served upon the State and accepts notice.

4. Learned counsel for the petitioner submits that while deciding the application for bail, the learned Trial Court vide impugned order dated 22.10.2021 held that no case is made out against the petitioner under Sections 143/147/148/149/186/353/332/333/307/308/427/435/323/341/120B/34 IPC, Section 3/4 Prevention of Damage to Public Property Act and Section 25/27 Arms Act. Further, with reference to Sections 153A/124A IPC, following observations were made in paras 10, 11 and 15 which may be reproduced:-

“10. As far as allegations against applicant/accused for offences under sections 143/147/148/149/186/353/332/333/307/308/427/435/323/341/120B/34 IPC & 3/4 Prevention of Damage to Public Property Act & under section 25/27 Arms Act with aid of section 109 IPC are concerned, after going through the record, I am of the prima facie view that the evidence in support of the allegations (rioteers got instigated by the speech dated 13.12.2019 of applicant/accused

and thereafter they indulged in the acts of rioting, mischief, attacking the police party etc), is scanty and sketchy. Neither any eye witness has been cited by prosecution nor there is any other evidence on record to suggest that co-accused got instigated and committed the alleged act of rioting etc upon hearing the speech of applicant/accused Sharjeel Imam. Further, there is no evidence corroborating the version of prosecution that alleged riateers/co-accused were a part of the audience addressed by applicant/accused Sharjeel Imam on 13.12.2019. Upon specific inquiry by this court, Ld. Special Public Prosecutor fairly conceded that at this stage, there is no material available with prosecution to the effect that applicant/accused and other co-accused persons were members of any common social platform viz whatsapp etc so as to fasten the liability of acts of co-accused upon present applicant with aid of section 109 IPC. The essential link between the speech dated 13.12.2019 and the subsequent acts of co-accused is conspicuously missing in the instant case.

11. The theory as propounded by investigating agency leaves gaping holes which leaves an incomplete picture unless the gaps are filled by resorting to surmises and conjectures or by essentially replying upon the disclosure statement of applicant/accused Sharjeel Iman and co-accused. In either case, it is not legally permissible to build the edifice of prosecution version upon the foundation of imagination or upon inadmissible confession before a police officer. Once the legally impermissible

foundation of imaginative thinking and disclosure statement of accused/co-accused is removed, the prosecution version on this count appears to be crumbling like a house of cards. Though Ld. Special Public Prosecutor argued that said disclosure statements are relevant under section 8 of Indian Evidence Act, however the said argument appears to be nothing but a desperate attempt on his part to save the day for prosecution.

12 xxxxxxxx

13 xxxxxxxx

14 xxxxxxxx

15. Thus in view of settled position of law, the issue whether the said speech would fall within ambit of section 124A IPC or not, requires a deeper analysis at an appropriate stage. However, suffice it would be to observe that a cursory and plain reading of the speech dated 13.12.2019 reveals that same is clearly on communal/divisive lines. In my view, the tone and tenor of the incendiary speech tend to have a debilitating effect upon public tranquility, peace and harmony of the society.”

5. It is further the case of the petitioner that during the pendency of the regular bail application before this Court, writ petitions were filed, challenging the constitutional validity of Section 124-A IPC before the Hon’ble Supreme Court, wherein it has been directed that all p ending trials, appeals and proceedings with respect to charge framed under Section 124A IPC be kept in abeyance. Further, it has been directed that 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.

It is further urged by the learned counsel for the petitioner that Section 124-A IPC cannot be taken into consideration, in view of the observations of the Hon'ble Supreme Court and the only offence which remains to be considered is the adjudication with reference to Section 153-A IPC, which is punishable with three years of imprisonment.

It is informed that the petitioner has already preferred an application under Section 436-A Cr.P.C. with reference to Section 153-A IPC, which is pending consideration before the learned ASJ-05, South-East District, Saket Court, New Delhi, since the applicant/petitioner was arrested on 17.02.2020 and has already undergone imprisonment for approximately 31 months and is entitled for consideration of bail under Section 436-A Cr.P.C.. Reliance is further placed upon the judgment dated 11.07.2022 passed by the Hon'ble Supreme Court in *Satender Kumar Antil Vs. Central Bureau of Investigation & Anr*, Special Leave Petition (Crl.) No.5191/2021. It is further prayed on behalf of the petitioner that an order may be passed by this Court, clarifying that the pendency of the present bail application under Section 439 Cr.P.C. before this Court will not come in the way, while deciding the application under Section 436-A Cr.P.C. before the learned ASJ-05, South-East District, Saket Courts, Delhi.

6. Learned SPP for the State submits that observations could not be considered by the learned Trial Court with reference to Section 124-A IPC on 22.10.2021, since the directions have been subsequently passed by the Hon'ble Supreme Court on 11.05.2022. It is also urged that the application for bail pending before this Court may be withdrawn in entirety, as it may not be

appropriate for consideration of application under Section 436-A Cr.P.C. in piecemeal with reference to Section 153-A IPC.

7. I have given considered thought to the contentions raised.

Section 436-A Cr.P.C. provides that where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties.

First proviso to Section 436-A Cr.P.C. further provides that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties.

Further, second proviso to Section 436-A Cr.P.C. provides that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

It may be observed that Section 436-A Cr.P.C. was inserted by Act 25 of 2005 with a laudable object for granting bail with respect to the offences for which the punishment of death has not been specified as one of the punishments under law, to uphold the rights of imprisoned individuals who are forced to languish in jail for prolonged period, pending inquiry, investigation or trial. The provision draws the maximum period for which an

undertrial prisoner can be detained and the period needs to be reckoned with the custody of the accused during the investigation, inquiry and trial.

However, the first proviso to Section 436-A Cr.P.C. permits the continued detention of said person for a period longer than one-half of the said period, if such detention is necessary for the reasons to be recorded in writing. Such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. It also needs to be kept in perspective that Section 436-A Cr.P.C. facilitates liberty being the core intendment under Article 21 of the Constitution of India, as observed in *Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.* (supra).

8. Further, the directions passed by the Hon'ble Supreme Court vide order dated 11.05.2022 in W.P. (C) No.682/2021 in *S.G. Vombatkare Vs. Union of India* and connected batch of petitions may be beneficially quoted:-

“...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...”

In the facts and circumstances, I am further of the considered opinion that it is of paramount consideration that the learned Trial Court considers the application for bail already preferred on behalf of the petitioner under Section 436-A Cr.P.C, also with reference to Section 124-A IPC keeping in perspective the directions issued by the Hon'ble Supreme Court under Section 124-A IPC in *S.G. Vombatkare Vs. Union of India (Supra)*.

9. With the aforesaid observations, the present Bail Application No. 4236/2021 filed on behalf of the petitioner Sharjeel Imam is permitted to be withdrawn, without prejudice to the rights and contentions of the respective parties and with liberty to approach this Court afresh, if so advised. The present application filed on behalf of the petitioner as such does not require any further clarifications and accordingly stands disposed of.

Pending applications, if any, also stand disposed of. Nothing stated herein shall tantamount to opinion on merits of the case.

Date for 18.11.2022 stands cancelled.

A copy of this order be forwarded to the learned Trial Court for information and compliance.

ANOOP KUMAR MENDIRATTA, J.

SEPTEMBER 26, 2022/A