

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.5547 OF 2021 (GM - RES)

BETWEEN:

MOHAMMED SHARIFF

... PETITIONER

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

NATIONAL INVESTIGATING AGENCY
REPRESENTED BY THEIR STANDING COUNSEL
OFFICE AT HIGH COURT COMPLEX
OPP. TO VIDHANA SOUDHA
BENGALURU - 560 001.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CONGNINZANCE ORDER

DTD.12.2.2021 AT ANEXURE-B DTD.12.02.2021 PASSED BY LEARNED SPECIAL NIA COURT IN CONNECTION UNDER SECTION 15, 16, 18 AND 20 OF THE UA(P) ACT 1967 SECTIONS 143, 147, 148, 353, 333, 332, 436, 427, 149 OF THE IPC 1860 AND SECTION 4 OF THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT 1984 REGISTERED AGAINST THE CRIME NO.229/2020 OF KG HALLI PS PENDING ON THE FILE OF HONBLE SPECIAL NIA COURT AT BANGALORE (CCH-5) AT BANGALORE AS SPL C.C.NO.141/2021 CONSEQUENTLY QUASH THE CHARGE SHEET AT ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner/accused No.25 is before this Court calling in question order dated 12-02-2021 passed by the XLIX Additional City Civil and Sessions Judge & Special Judge for NIA Cases at Bangalore in Special C.C.No.141 of 2021 - Cr.No.RC-35/2020/NIA/DLI for offences punishable under Sections 15, 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 ('the Act' for short), Sections 143, 147,148, 353, 333, 332, 436, 427 and 149 of the IPC, and Section 4 of the Prevention of Damage to Public Property Act, 1984, registered in Crime No.229 of 2020 of Kadugondanahalli ('K.G.Halli' for short) Police Station. By the said order, the learned Special Judge takes cognizance of the aforesaid offences against several accused including the petitioner.

2. Shorn of unnecessary details, the facts in brief, as projected by the prosecution, are as follows:-

It is the case of the prosecution that on 11-08-2020, one Naveen posts a defamatory statement on social media against Prophet Mohammed. The said statement was circulated, due to which, on the same day at about 7.30 p.m. people started gathering in front of Devarajeevanahalli ('D.J.Halli') and K.G.Halli Police Stations. At about 8.00 p.m., the house of local Member of the Legislative Assembly was ransacked; the allegation was that, it was brunt as well by hundreds of people coming within the limits of both D.J.Halli and K.G.Halli Police Stations. On the said incident, a crime comes to be registered in Crime No.219 of 2020. At 8.15 p.m. on the same day, the house of Naveen who had posted on the social media was also ransacked by hundreds of people. This comes to be registered as crime in Crime No.208 of 2020. At about 11.00 p.m., hoards of people gathered in front of K.G.Halli Police Station demanding arrest of Naveen P., the nephew of R. Akhanda Srinivasamurthy, Member of Legislative Assembly from Pulakeshinagar. The ground of demand for arresting was

derogatory remarks made in the face book account. Despite earlier complaint and a complaint against Naveen being lodged, the mob that gathered in front of K.G. Halli Police Station did not disperse. The Police had to resort to lathi charge. It is at that point in time, it is alleged that the mob started attacking the police and public properties on a large scale and damaged several public and private properties, which happened notwithstanding imposition of prohibition under Section 144 of the Cr.P.C. in and around the Police stations i.e., both D.J.Halli and K.G.Halli. The violence of the mob escalated and the accused are alleged to have pelted stones around the place of the Police Stations and on the public properties in and around the Police Stations. It is further alleged that people shouted slogans, police station was attacked and the police personnel, who were all on duty were beaten. The unruly mob did not stop. They started vandalizing police station and setting on fire the vehicles parked in front of the K.G.Halli Police Station and other places nearby police station.

3. The persons gathered there, were alleged to be possessing iron rods, wooden sticks, inflammable substances, stones and other

weapons. Despite the efforts made by the Police, the mob refused to disperse and continued with the violent acts, during which, 12 vehicles were alleged to have been damaged. This becomes a crime in Crime No.229 of 2020 registered on 12.08.2020, the next day initially against 14 accused. Later on, several accused were added for the offences punishable under the provisions of the IPC, which were Sections 143, 147, 148, 332, 353, 333, 436, 427 and 149 of the IPC and Section 4 of the Prevention of Damage to Public Property Act, 1984. Later on, it appears that provisions of Sections 15, 16, 18 and 20 of the Act were invoked and the matter was handed over to the National Investigating Agency ('NIA' for short).

4. After the investigation was taken over by the NIA on 21.09.2020, a fresh FIR was registered on the same day of its taking over, by invoking Sections 15, 16, 18 and 20 of the Act apart from the provisions of the IPC and Prevention of Damage to Public Property Act as quoted hereinabove. After investigation, NIA files its charge sheet in RC No.35/2020/NIA/DLI. After filing of the charge sheet, the Special Court by its order dated 12-02-2021 took cognizance for the afore-quoted offences against all the accused

and the petitioner is arraigned as accused No.25. It is taking of cognizance by the Special Court is what drives the petitioner to this Court in the subject petition.

5. Heard Mr. Mohammed Tahir, learned counsel appearing for the petitioner and Sri P. Prasanna Kumar, Special Public Prosecutor appearing for the respondent.

6. The learned counsel appearing for the petitioner would contend with vehemence that the order of the Special Court bears no application of mind as there are no allegations against the petitioner that would touch upon offences punishable under the Act. At best, the petitioner can be said to be alleged of offences punishable under the IPC and there cannot be any offence that can be alleged under the Act. Therefore, the petitioner has to be tried by the jurisdictional Court, either the learned Magistrate or the learned Sessions Judge. Conducting trial by the NIA Court is contrary to law. He would contend that NIA Court is only concerned with offences that would become punishable as defined under Section 15 of the Act and, therefore, would submit that the proceedings before the NIA Court against the petitioner be quashed

and he be permitted to be tried for IPC offences before the regular Court.

7. The learned counsel appearing for the respondent/NIA would vehemently refute the submissions to contend that the acts of the petitioner along with others clearly come within the definition of 'Terrorist act' as defined under Section 15 of the Act and the NIA Court has the jurisdiction to try the offences both coming under the IPC and that of the Act. It cannot be said that the Special Court has not applied its mind while taking cognizance of the offences as the charge sheet has made it clear as to what is the role played by the petitioner, who is alleged to have committed offences under the Act. He would seek dismissal of the petition. The learned counsel for the respondent would further submit that this Court while deciding bail application of this very petitioner in Criminal Appeal No.1448 of 2021 decided on 30th March, 2022, has clearly considered all these aspects which were submitted before the Division Bench and has declined to grant the bail to the petitioner. Those findings have become final and those findings would become applicable to the facts of the case at hand as well.

8. In reply to the aforesaid submission, the learned counsel for the petitioner would contend that the findings in a petition concerning bail will not bind the Court hearing the matter under Section 482 of the Cr.P.C. seeking quashment of the proceedings on account of total non-application of mind on the part of the concerned Court as well as the allegations not making out any offence under the Act.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

10. The afore-narrated facts are not in dispute and, therefore, do not require any reiteration. The only issue that falls for consideration is,

"whether the petitioner can be tried by the Special Court in the teeth of the alleged offences?"

11. To consider the said issue, it is germane to notice certain provisions of the Act. Chapter IV of the Act deals with punishment

for terrorist activities. Section 15 under the said Chapter reads as follows:

"15. Terrorist act.— (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

- (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—**
 - (i) death of, or injuries to, any person or persons; or**
 - (ii) loss of, or damage to, or destruction of, property; or**
 - (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or**
 - (iii-a) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or**
 - (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or**
- (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes**

death of any public functionary or attempts to cause death of any public functionary; or

- (c) **detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act; or commits a terrorist act.**

Explanation.—For the purpose of this sub-section,—

- (a) *"public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;*
- (b) *"high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates compromises with the key security features as specified in the Third Schedule.*

(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule."

(Emphasis supplied)

Section 15 of the Act makes an act punishable, if committed by any person who would threaten or likely to threaten unity, integrity, security, sovereignty of India or with intention to strike terror of the people of the country. Clause (a) of sub-section (1) of Section 15 directs as to what kind of acts would become terrorist activities viz., activity of usage of bombs, dynamite or other explosive or

inflammable substances or firearms or other lethal weapons. Usage of these weapons would generate terror or any act with an intention to threaten unity, integrity and security of the nation, would become vulnerable for punishment. Sub-clause (ii) of clause (a) of sub-section (1) of Section 15 of the Act deals with loss or damage or destruction of property would become an offence under Section 15 of the Act.

12. Section 18 deals with punishment for conspiracy. Whoever conspires or attempts to commit or advocates, abets, advises the commission of terrorist act as defined under Section 15 of the Act would become punishable under Section 18 for conspiracy. What is necessary to be noticed is, whether acts alleged against the petitioner would become offences punishable under Section 15 or 18 of the Act. It, therefore, becomes germane to notice the allegations made against the petitioner. In the charge sheet filed by the NIA, the petitioner is accused No.25. The allegations against the petitioner in terms of the charge sheet are under Sections 120B read with 147 of the IPC and Sections 16, 18

and 20 of the Act. Sections 16, 18 and 20 of the Act read as follows:

"16. Punishment for terrorist act.—(1) Whoever commits a terrorist act shall,—

if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

... ..

"18. Punishment for conspiracy, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or 33[incites, directs or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

... ..

"20. Punishment for being member of terrorist gang or organisation.—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine."

Section 16 of the Act depicts punishment for terrorist act as defined under Section 15 of the Act. Section 18 of the Act deals with punishment for conspiracy and Section 20 of the Act deals with punishment for being member of terrorist gang or organization.

The allegations are thus, the ingredients of those offences. Whether the ingredients of those offences have formed the charge sheet is what requires consideration in the case at hand.

13. The role of the petitioner in the entire episode of alleged crime is found at paragraph 17.61.7 of the charge sheet, which reads as follows:

"17.61.7. Role of Mohamed Shariff (A-25):

- i. *Investigation revealed that Mohamed Shariff (A-25), being member of terrorist gang and SDPI, Bengaluru District President hatched a criminal conspiracy with Muzammil Pasha (A-2) and other SDPI leaders. In pursuance to the said conspiracy, on 11-08-2020 at 1305 hours, Fairoz Pasha posted a derogatory video/audio against Hindu Gods on his Face book account with an intention to promote enmity and disharmony between different religious groups. He also tagged the same Facebook post with one Naveen, nephew of Shri Akhanda Srinivasa Murthy, MLA. Fairoz Pasha (A-1) and his SDPI associates intentionally posted the said derogatory video to instigate the members of other community members to hurt their feelings and thereby to create communal disharmony and in the society. These accused persons selected the date on 11th August, 2020, which was the day of Janmashtami i.e., birthday of Lord Krishna, an auspicious day for Hindus.*
- ii. *Mohamed Shariff (A-25) was aware of the derogatory Face book video posted by Fairoz Pasha (A-1) against Hindu Gods to instigate Hindu community sentiments and was expecting a response from them. As such, on 11-08-2020, from 1700 hours to 1900 hours Mohamed Shariff (A-25) had a conspiracy meeting with Muzammil*

Pasha (A-2) at his office at HBR layout, Bengaluru for mobilizing their cadres and others for committing violent acts at KG Halli and DH Halli police stations and other places. After that meeting, Mohamed Shariff (A-25) went to attend SDPI Thanisandra Ward meeting at Hegde Layout. In this meeting, 17 SDPI ward members attended with Mohamed Shariff (A-25). The meeting started at 1940 hours and lasted till 2020 hours. After leaving Muzammil Pasha (A-2)'s office, Muzammil Pasha (A-2) and Mohamed Shariff (A-25) were in constant touch over phone calls and WhatsApp chat. Muzammil Pasha (A-2) also forwarded the screen shot of the derogatory Face Book message of Naveen to Mohamed Shariff (A-25) through WhatsApp. As decided in the meeting, the SDPI, Thanisandra ward members were involved in mobilizing their SDPI cadres and others for attacking KG Halli and DJ Halli police stations and police officers on duty and to create terror in the public. Immediately after completion of Thanisandra ward meeting Mohamed Shariff (A-25) reached at Nagawara SDPI office at Govindapura Main Road. There he conducted another conspiracy meeting and the said meeting started around 2030 hours and lasted for about 10 to 15 minutes which was attended by Mohamed Shariff (A-25), Syed Abbas (A-3), Habeeb Ur Rehman (A-4), Peer Pasha (A-5), Ziya Ur Rehman (A-6) and Firoz Pasha (A-7). In this meeting the participants conspired and decided to carry out violent acts by attacking Police personnel and KG Halli Police Station as retaliation to the derogatory Face Book post of Naveen. Then all these accused persons except Mohamed Shariff (A-25) left the meeting place and reached KG Halli PS for filing FIRs and mobilizing SDPI cadres and others for attacking police station and police officers. However, Mohamed Shariff (A-25) remained at Nagawara Ward to coordinate the activities in furtherance to the conspiracy.

- iii. Investigation also established that Mohamed Shariff (A-25) was coordinating the movements and activities of accused persons including SDPI cadres during the offence at KG Halli and DJ Halli police stations. He was in regular contact with several SDPI and PFI leaders for

mobilizing their cadres including muzammil Pasha (A-2), Ziya Ur Rehman (A-6), Syed Mehboob, Shakeel Basha, SDPI ward President, Thanisandra, Rashid Ali, Tresurer in SDPI, Bengaluru, Naseerudeen J, Joint Secretary SDPI Bengaluru District, Wajid, President of PFI, Bengaluru District, Saleem Ahmed, General Secretary of SDPI, Bengaluru District, Firoz Pasha (A-7), Syed Abbas (A-3) and many other SDPI and PFI leaders.

- iv. *The acts of Mohamed Shariff (A-25) have been established through prosecution witnesses, documentary/electronic evidence and CDR of the mobile number used by accused persons during the relevant period of crime.*

Thus, Mohamed Shariff (A-25) being a member of terrorist gang, and in conspiracy with other accused persons for use of criminal force was involved in committing violent acts and thereby is punishable under Section 120B r/w 147 of IPC and Sections 16, 18 and 20 of the UA (P) Act, 1967."

A perusal at the contents of the charge sheet *qua* the petitioner would clearly indicate the ingredients of offences punishable under Sections 16, 18 and 20 of the Act. The call record details of the petitioner are placed as a document to the charge sheet. The investigation established the petitioner coordinating with the movements and activities of the other accused persons. He was in constant touch and was meeting the participants who conspired and decided to carry out the violent attack on the police personnel. Therefore, there is *prima facie* material in the charge

sheet against the petitioner for alleging the offences under the Act. Whether this would become a terrorist act under Section 15 of the Act is also germane to be noticed and it is quoted hereinabove.

14. The allegation against the petitioner or others in common is, usage of inflammable devices as there is allegation of burning of vehicles either with explosive substance or inflammable substance, loss or damage or destruction to public property all with an intent to disturb the security of the region of the nation. Therefore, the ingredients of Section 15 of the Act, in the considered view of this Court, are *prima facie* met. Any further observation being made with regard to the role of the petitioner would undoubtedly prejudice his case before the concerned Court, as the matter is yet to reach the stage of evidence.

15. The other submission made by the learned counsel for the petitioner is that the NIA Court cannot try the offences punishable under the IPC, need not be considered in the light of the aforesaid findings that the allegations against the petitioner do touch upon the ingredients of Section 15 of the Act and if they touch upon the ingredients of Section 15 of the Act, the alleged offences are *prima*

facie present in the fact situation. Section 15 of the Act cannot be read in isolation. It has to be read along with Sections 16 and 18 of the Act. Therefore, the contentions so advanced by the learned counsel appearing for the petitioner do not merit acceptance.

16. The learned counsel for the petitioner has strenuously contended that despite passage of 2 years, there is no progress in the trial and there has to be a direction for conclusion of the trial within a time frame. The submission though would merit consideration at the first blush, but what is required to be noticed is, there are large number of accused facing trial. Therefore, this Court would not accept the submission in the peculiar facts of this case. It is for the concerned Court to regulate its procedure and consider for expeditious disposal. There cannot be a direction to dispose of the matter within a time frame.

17. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition stands rejected.
- (ii) The concerned Court shall regulate its procedure to consider expeditious disposal of the cases before it.

I.A.No.1/2021 is also disposed, as a consequence.

nvj
CT:MJ

**Sd/-
JUDGE**