

IN THE COURT OF ADDITIONAL SESSIONS JUDGE/
SPECIAL JUDGE S.C./S.T.ACT, LUCKNOW.
(in jail premises)

S.T. No. 1580 of 2008
State Prosecution
.....
versus
Khalid Muzahid and others Accused persons.

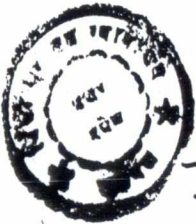
copy of

14.04.2011:- The Case taken-up.

Accused persons, Khalid Muzahid, Mohd. Tariq Kazmi, Sajjadurrehman and Mohd. Akhtar @ Tariq Kashmiri have been produced before the court in judicial custody.

Heard learned ADGC (Criminal) on the point of framing charge against the accused persons as also learned counsel for the accused persons on application under section-227 Cr.P.C. moved on behalf of the accused persons for their discharge. and the points raised by defence counsel.

Learned ADGC (Criminal) submitted that the call details relating to mobile sim No. 9889810588 showing that on 22.12.2007 at 11.49 hours communication was executed from the said mobile sim which is in respect of failed SMS from sim No. 46726565536. This, he said, was since the mobile and sim relating to 9889810588 had been seized by STF at 6.15 a.m.. As regards the call details shown at page 269 relating to mobile sim No. 9495944792, he submitted that the mobile set recovered from the house of accused Tariq Kazmi was tested by a different sim to ensure as to whether any call had been made by this mobile and it was found that the said mobile did not relate to any matter directly concerning the accused in respect of the present case it was, however, submitted that EIME of the mobile set which is alleged to have been recovered has been mentioned in this call details.



It has been further argued that the explosive substance used in the series of explosion executed in Lucknow, Faizabad and Varanasi was exactly the same and fingerprints of accused Khalid Muzahid and Mohd. Akhtar alias Tariq Kashmiri were found on the explosive substance recovered from Faizabad even though fingerprints on the explosive substance recovered from Lucknow were not identifiable since they were blurred. Fingerprints on the similar explosive substance recovered from Faizabad goes to show the involvement of accused Khalid Muzahid and Mohd. Akhtar alias Tariq Kashmiri in the incident. The substance recovered from all the three places where serial blasts occurred was the same, which, according to the prosecution was manufactured at the residence of accused Khalid Muzahid ,

Regarding the number on the bicycle mentioned as 95K71850 in the recovery memo, learned ADGC(Criminal) submitted that it is possible that there might have been mistake in writing-down the number which was actually 95K78150 which is mentioned in the case-diary and the receipt which was recovered in the investigation. He submitted that, since the bicycle, which is the case property, shall be produced in evidence

before the court during the trial, this difference could be sorted-out.

Learned ADGC (Criminal), relying on the provisions of section-43 (e) of the Unlawful Activities (Prevention) Act, 1967, submitted that since the fingerprints of Khalid Muzahid and Mohd. Akhtar alias Tariq Kashmiri have been found on the explosive substance recovered in the series of explosion at Faizabad, the court shall presume that the accused has committed such offence at this stage and there is evidence to establish the charge under section-15 of the Act against these two accused persons. The names of other two accused persons have come to light during investigation during interrogation from these two accused persons and literature relating to terrorist organization has also been recovered from all the four accused persons.

On the basis of the above arguments, learned ADGC (Criminal) submitted that charge under sections-115, 120-B, 307, 121, 122, 124-A IPC, 3/4/5/6 of the explosive substance Act and 15/18/10 of the Unlawful Activities (Prevention) Act, is made-out against all the four accused persons on the basis of the evidence and material collected and produced along with the charge sheet.

Learned defence counsel argued that substance recovered in Faizabad will have no bearing on the case against the accused because the present case relates to the incident that occurred in Lucknow. However, he submitted that the mobile set which was used after the recovery memo was prepared goes to show that it was not sealed at the time at which the recovery memo was prepared. He further argued that, even if similar material is used in different places in incidents of terrorist acts and the same material is said to have been recovered from the accused, or even from the place of the occurrence, it will not be sufficient to establish charge against the accused persons on the basis of similar recovery at different places. He also contended that if fingerprints of two of the accused were found on the substance that was recovered at Faizabad, it could not be taken as evidence against the accused persons merely because similar substance was used in Lucknow in the incident since no such fingerprints were found on the substance recovered from Lucknow which could be matched with the fingerprints of the accused persons. Learned counsel submitted that merely on the basis of confessional statement before the police it cannot be said that there is enough evidence to frame charge against the accused persons.

Learned counsel for the defence further submitted that the prosecution has no evidence, or any other material to relate accused Sajjadurehman with the present incident, except confessional statement of the accused persons before the police officer which are not admissible in evidence. Hence, no charge against accused, Sajjadurrehman is made-out.

In his reply, as regards framing of charge against accused, Sajjadurrehman is concerned, learned ADGC (Criminal) has not been able to spell out the basis on which it proposes to establish the charge, except confessional statement of the accused persons before the police officer, which shall not be admissible in evidence.

In this view of the matter, I am of the considered opinion

that a prima facie case for framing charge for the offence under sections-115, 121, 122, 120-B, 307, 124-A IPC, 3, 4, 5 & 6 of the Explosive substance Act and 16, 18 & 20 of the Unlawful Activities (Prevention) Act is not made-out against accused, Sajjadurrehman as there is no tangible evidence to establish any of the charge against him and he, therefore, deserves to be discharged. Accordingly, accused, Sajjadurrehman, is discharged in the present case and is directed to be released, if not wanted in some other case.

In my view, having regard to the facts that have been placed before me by the prosecution, including the recovery of bicycle and its origin, as also the fact that similar material was used in serial blasts in three different districts in similar manner, fingerprints of two of the accused persons were found on the material which was recovered at Faizabad, presence of one of the accused is said to have been there in Lucknow and apart from this the literature & other material relating to terrorist organization is also said to have been recovered from the accused persons, the entire material raises a very strong suspicion against accused persons, Khalid Muzahid, Mohd. Tariq Kazmi and Mohd. Akhtar @ Tariq Kashmiri for commission of the offence punishable **under sections-115, 121, 122, 120-B, 307, 124-A IPC, 3,4,5 & 6 of the Explosive Substance Act and 16, 18 & 20 of The Unlawful Activities (Prevention) Act**, against them.

Accordingly, I direct that charge be framed accordingly against the above named three accused persons.

Fix **28.04.2011** for framing charge against the three accused persons.

(Shashank Shekhar)
Special Judge, SC/ST Act),
Lucknow

Dated: April 14, 2011

Shashank Shekhar

