

**IN THE COURT OF SH. SAMEER BAJPAI
ADDITIONAL SESSIONS JUDGE – 03
(SHAHDARA), KARKARDOOMA COURTS, DELHI**

**I.A. No. : 04-2023 (SC No. : 132/2020)
FIR No. : 22/2020
U/s 124A/153A/505(2) IPC and 13 of UAPA
PS : Crime Branch
State vs. Sharjeel Imam**

17.02.2024

ORDER

1) In the present application the applicant seeks bail under section 436A of the Code of Criminal Procedure, 1973.

2) It is submitted by the applicant that after registration of the FIR on 25.01.2020 in the police station Crime Branch, under section 124A, 153A, 153B and 505(2) of the Indian Penal Code and section 13 of the Unlawful Activities (Prevention) Act, 1967, the applicant was arrested on 28.01.2020 and since then he has been in custody. It is further submitted that after completion of the investigation, the charge sheet was filed on 25.07.2020 for the same offences for which the FIR was registered. Further, thereafter on 29.07.2020 the court took cognizance of the offences of the IPC and on 19.12.2020 took cognizance for the offence under section 13 of the UAPA. Thereafter, a formal charge was framed against the applicant vide order dated 15.03.2022 under sections 124A, 153A, 153B and 505(2) IPC and section 13 of UAPA.

3) It is further submitted by the applicant that in the meanwhile, a batch of writ petitions challenging the constitutionality of the offence punishable under section 124A IPC were filed in the Hon'ble Supreme Court and in S.G. Vombatkere vs. Union of India, W.P.(c) 682/2021, vide order dated 11.05.2022 directions were given regarding stay of trial of all the proceedings arising out of the offence punishable u/s 124A of the IPC. Consequent upon the directions of the Hon'ble Supreme Court, the Hon'ble High Court of Delhi vide order dated 31.10.2022 in CrI. Appeal no. 347/2022 directed that trial of the present case be stayed in respect of material witnesses and only formal witnesses be examined.

4) It is further submitted that section 436A of the Cr.P.C. is a wholesome beneficial substantive provision effectuating right of speedy trial guaranteed by Article 21 of the Constitution. Further, keeping aside section 124A of the IPC, in the remaining sections of IPC the maximum punishment is imprisonment for five years and for the offence under section 13 UAPA the same is seven years and the applicant has already undergone detention for more than four years. Ld. counsel further submitted that under section 436A Cr.P.C., the court is bound to grant bail to the applicant.

5) In support of his arguments ld. counsel for the applicant has placed reliance mainly on the following judgments : **(i) Satender Kumar Antil vs. Bureau of Investigation (2021) 10 SCC 773 and (ii) Vijay Madan Lal Chaudhary and Ors. vs. Union of India, 2022 SCC Online SC, 929.**

6) In its reply dated 07.09.2023, it is submitted on behalf of the prosecution that the applicant has preferred the application by selectively reading the statutory provision to suit his interest. Further, the application is pre-matured as the applicant is facing trial for as many as five offences being sections 124A, 153A, 153B and 505(2) IPC and section 13 of the UAPA. Besides the written reply, it was submitted on behalf of the prosecution in the written submissions dated 13.10.2023, that out of all the offences as charged against the applicant, only section 124A IPC has been kept in abeyance but despite that the nature and gravity of the offences is not diluted and the same continues to be part of the statute book. Further, if conviction is recorded, the sentence likely to be awarded is to be seen in terms of the legal provision under section 31 Cr.P.C., which prescribes that when a person is convicted at one trial for two or more offences, the punishments shall run one after the other, unless the court in its discretion orders that the punishments shall run concurrently.

7) The court has heard arguments and gone through the record.

8) One of the aspects of this application as has to be dealt with by the court is section 124A IPC. Ld. Special P.P. submitted that although the provision under section 124A IPC has been kept in abeyance by the Hon'ble Supreme Court in **writ petition (civil) no. 682/2021** titled as **S.G. Vombutkere vs. Union of India** and many other connected petitions but the restriction is only regarding a few parts of the provision and not on the whole

of it. Ld. Special P.P. contended that in para 8(d) of the order dated 11.05.2022, the Hon'ble Supreme Court kept in abeyance only the pending trials, appeals and proceedings with respect to the charge framed under section 124A of IPC and not any proceeding with regard to the bail under section 436A Cr.P.C.

9) On the other hand, ld. counsel for the applicant contended that in view of the order in the mentioned petition, the order of the Hon'ble Supreme Court is very clear and the effect of the relevant provision has been kept in abeyance in total and the court cannot consider any aspect of the said section.

10) The court is not in agreement with the ld. Special P.P. that at this time, while considering the bail application under section 436A Cr.P.C., the court can consider the period of imprisonment as prescribed for the offence under section 124A IPC i.e. imprisonment for life. It is noted that in the same para of the order dated 11.05.2022 i.e. para 8(d), the Hon'ble Supreme Court has also mentioned that adjudication with respect to the other sections, if any, could proceed; which means that any kind of adjudication with respect to section 124A IPC cannot be proceeded with by the court. Thus, this court must not consider the sentence as provided under section 124A IPC i.e. life imprisonment for the purpose of deciding the present application.

11) Now, comes the question whether the applicant should be granted the desired relief in view of the facts of present case.

12) For clarity it would be appropriate to reproduce the relevant part of Section 436A Cr.P.C. as under :

436A. Maximum period for which an undertrial prisoner can be detained – 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 upto one-half of the maximum period of imprisonment specified for that offence under the law, he shall be released by the court on his personal bond with or without sureties :

Provided 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 :

Provided further 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.

13) From the reading of the provision it is clear that when a person has undergone detention for one-half of the maximum period of imprisonment specified for any offence, he shall be released by the court on his personal bond with or without sureties. The proviso however, provides that the court may after hearing the Public Prosecutor and the reasons to be recorded in writing, order continued detention of the accused for a longer period than one-half.

14) Thus, from the plain reading of the provision it is clear that in exceptional circumstances, to be explained by the court, an accused can be kept in further detention.

15) Ld. counsel for the applicant in support of his arguments, first relied upon *Satender Kumar Antil vs. Bureau of Investigation* and pointed out para 63 and 64 of the said judgment and contended that the Hon'ble Supreme Court has clearly mandated that the word 'shall' denotes the mandatory compliance of the provision and also noted that infact there is even no need for an accused to move a formal bail application in this regard. Giving reference to the mentioned paras of the said judgment, ld. counsel further contended that although the court has no discretion and bound to give the relief to the applicant but even if the proviso to the section is considered, the court may use its discretion only when the delay in trial is on the part of the accused.

16) It is noted that in the same para i.e. para no. 64 of the cited judgment as pointed out by the ld. counsel for the applicant, it is mentioned that if the court is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. It is further noted by the Hon'ble Supreme Court that such an exercise of power is accepted to be undertaken sparingly being an exception to the general rule. It is thus, clear from the cited judgment that in exceptional circumstances, the court can decline such relief to an accused and can extend his custody.

17) Ld. counsel also relied upon **Vijay Madan Lal Chaudhary and Ors. vs. Union of India** and specifically pointed out paras 416 to 421 of the judgment and submitted that section 436A Cr.P.C. has been construed as a statutory bail akin to section 167 of 1973 Code. Ld. Counsel contended that in para 421 of the said judgment the Hon'ble Supreme Court has given clear opinion that section 436A Cr.P.C. needs to be construed as a statutory bail provision and the same is akin to section 167 of the 1973 Code.

18) It is true that in the mentioned para it has been opined that section 436A Cr.P.C. needs to be construed as a statutory bail provision but in para 419 the Hon'ble Supreme Court has noted that although the court must consider the bail application of the accused after one-half of the period of detention as provided for the offence but the detention can be continued by the court even for longer than one-half of the period for which reasons are to be recorded. It is further noted by the Hon'ble Supreme Court that indeed section 436A of the 1973 Code also contemplates that the relief under this provision cannot be granted mechanically and it is still within the discretion of the court, unlike the default bail under section 167 of the 1973 Code. It is further mentioned in the said para that under section 436A of the 1973 Code, the court is required to consider the relief on case to case basis as the proviso therein itself recognizes that in the given case the detention can be continued by the court even longer than one-half of the period for which reasons are to be recorded by it in writing. Thus, keeping in view the proviso and the opinion of the Hon'ble Supreme Court in the mentioned judgment it is clear

that the court can decline the desired relief to the applicant and continue his detention after recording the reasons.

19) Ld. counsel for the applicant also placed reliance upon a few judgments as passed by different Hon'ble High Courts. The first one is **Criminal Misc. Bail Application no. 23020 of 2021** of the present accused titled as **Sharjeel Imam vs. State of U.P.**, the second one is **2023 SCC Online Delhi 5407** titled as **Anil Kumar Sharma vs. State (NCT of Delhi)** and the third one is **Mohd. Saber vs. State of NCT of Delhi 2023 SCC Online, Delhi 2290**.

20) As far as the first order titled as Sharjeel Imam vs. State of U.P. is concerned, although the same relates to the similar kind of offences but the case regarding those offences was registered at Aligarh and the case in hand was registered Delhi and the facts herein are quite different.

21) As far as the other two judgments are concerned, they are altogether on different facts. Further, in the said two judgments, the Hon'ble High Court of Delhi has placed reliance on the two judgments i.e. Satender Kumar Antil and Vijay Madan Lal Chaudhary and they have already been discussed by the court.

22) Now, comes for consideration, the facts of the present case for considering the relief to the applicant.

23) In the charge sheet the allegations against the applicant are that in the context of CAA/NRC, the applicant delivered different speeches i.e. a speech at Jamia on 13.12.2019, at AMU on 16.01.2020, at Asansol on 22.01.2020 and at Chakband on 23.01.2020, thereby inciting the public which ultimately triggered the communal riots in different parts of Delhi. It is noted that the incidents or riots triggered on 13.12.2019 at Jamia, on 15.12.2019 at New Friends Colony, on 16.12.2019 at Dayal Pur, on 17.12.2019 at Seelampur and Jafrabad and on 20.12.2019 at Seemapuri and Nand Nagri. The contents of the speeches clearly show that the applicant incited the public to do *chakka jams* and block the cities. Particularly, in the speech dated 16.01.2020 as delivered at AMU, the applicant said that if a particular number of people are organised, the North-East part of the country can be permanently or temporarily cut. The applicant in the speech dated 22.01.2020 at Asansol said that the members of a particular community are not in Police, Army, Court and in the Parliament which was totally wrong and misconceived. Besides this, the applicant spoke about a number of things and facts which may not be true and thereby provoked the public as gathered at different places. Further, the voice samples of the applicant were sent to the CFSL and the report confirmed his voice in the mentioned speeches. Not only the applicant gave inciting speeches, but he created a WhatsApp group, "Muslim students of JNU" to raise voice against CAA and NRC and was active in it. Further, the applicant drafted, prepared and distributed pamphlets containing such material so as to instigate the members of a particular community in order to mobilise them against

CAA/NRC and this material was recovered from the desktop of the applicant.

24) It is noted in the charge sheet that after the speeches of the applicant and due to his activities, a number of protesters and protest sites in Delhi increased and as suggested by the applicant, the crowd started blocking the main roads which consequently put the whole city on a standstill. Finally, just after the speeches and the alleged activities of the applicant, on different dates and places, the riots occurred causing violence, huge damage to the public property and death of a large number of people.

25) It is noted that although the applicant did not ask anybody to pick the weapons and kill the people but his speeches and activities mobilised the public which disrupted the city and might be the main reason in outbreak of the riots. Further, through inflammatory speeches and social media, the applicant skillfully manipulated the real facts and incited the public in order to create a havoc in the city. Further, the words as used by the applicant in his different speeches were so powerful that they captured the mind of the people of a particular community and incited them to take part in the disruptive activities which finally resulted into the riots.

26) Although the court cannot take into consideration section 124A IPC but if the acts and actions of the applicant are considered, in a normal dictionary meaning they can be termed as seditious.

27) Thus, keeping in view the alleged acts of the applicant, the court is of the view that the facts in the case in hand are not normal and different than the facts which in any other case could be. Considering the allegations against the applicant and his disruptive activities, the court deem it appropriate not to consider the relief as prayed for and to continue his custody.

28) Accordingly, the application under section 436A Cr.P.C. as moved by the applicant is dismissed.

29) It is made clear that nothing stated in this order shall tantamount to an expression of any opinion on the merits of the case.

(Sameer Bajpai)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts
Dated : 17.02.2024