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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
CRA No. 10852 of 2023**

(SUSHIL Vs THE STATE OF MADHYA PRADESH)

Dated : 24-04-2024

Shri R.S.Chhabra, learned senior counsel with Shri Aman Arora, learned counsel for the appellant.

Shri Ajay Raj Gupta appearing on behalf of Advocate General.

Heard on IA No.5351/2024, which is second application for suspension of jail sentence under section 389(1) of Cr.P.C.

The first application was dismissed as withdrawn on 08.01.2024.

The appellant has been convicted under section 419, 467, 471, of IPC and 5 of Explosive Substance Act and sentenced to undergo RI for 1,5,5,5, years respectively with fine of Rs.500,1000,1000,1000/- with default stipulations.

That, as per the prosecution story, on 18.03.2016 a person in the name of Sajish Khan S/o. Vahid Khan R/o. Agar Malwa Road carrying a black bag entered into Atishay Shivalekh Hostel, Ujjain. Upon giving his identity card (ie. Aadhar Card) the aforesaid person checked inn in Room no. 212 of the aforesaid hostel. After check-inn, Sajish Khan left the hostel informing the watchman that he will return the hostel after having dinner. On 19.03.2016 around 10-10:30 AM when Sajish Khan did not returned back to the hostel, the owner of the hostel (Prabadh Jain) informed the police about the aforesaid. The Respondent police came to the hostel on 2:30 PM alongwith the BDDS team and the room no. 212 was unlocked. Upon unlocking the room the following items were seized by the police:-

1. A black bag

2. One jletin on which Shakti Power Blast is written
3. 26 Electronic Detonator
4. One Shockwave Tube with non electronic detonator
5. One Sirmek Condesor
6. One transformer
7. One battery — 9 Watt
8. Electric Circuit
9. One Pant and Shirt and one Nawazi Cap
10. Three Photocopy paper written in Urdu
11. Identity cards of Sajis Khan
12. One mobile phone and charger
13. One mobile sim

Upon seizure of the aforesaid articles, on 19.03.2016 an FIR bearing Crime no. 137/2016 was registered by the Respondent police against Sajish Khan for the offences u/s. 3, 4, 5 Of the Explosive Substance Act. The investigation was initiated and during the course of the investigation the present applicant and the co accused (Ashish Singh) was taken into custody by the Respondent police. The chargesheet was laid by the Respondent police for the offences u/s. 3, 4, 5 of the Explosive Substance Act and Section 420, 467, 468, 471 and 120-B of the IPC.

Learned counsel for the appellant submits that as per the statement of PW No.1 Radheshyam who was care taker of the hostel, CCTV was installed in the hostel but the prosecution has failed to produce the best evidence of CCTV footage and therefore such omission creates serious doubt about the prosecution case. In support of his submission, he has placed reliance on the judgment passed by the Apex Court in the case of Tomaso Bruno and Anor.

Vs. State of UP reported in (2015) 7 SCC 178. He referred para nos.21,22,26,27,28 of the said judgment. he further argued that the prosecution has not explained that from where they got information that the alleged bag was kept in room no.212 of the aforesaid hostel and the seizure of bag and explosive substance was recovered. He referred the statement of PW No.1 Radheshyam and also the statement of PW No.2 Prabadh Jain.

He argued that the entire conviction is based on the identification of the appellant by PW No.1 Radheshyam and PW No.2 Prabadh Jain. The said identification was conducted after the period of one month of the incident and the photographs of the accused persons were shown to the witnesses and therefore, identification parade is worthless. In support of his submission he has placed reliance on para no.8 of the judgment of the Apex Court in the case of *Ravindra @ Ravi Bansi Gohar Vs. State of Maharashtra reported in (1998) 6 SCC 609* and also the judgment passed by the Apex Court in the case of *R.Shaji Vs. State of Kerala reported in (2013) 14 SCC 266.*

It is also argued that Panchnama witnesses have turned hostile regarding seizure of items as mentioned in the presiding para. It is further argued that the IO PW No.9 Vivek Gupta has failed to explain that why efforts were not made to know the whereabouts of Sajish Khan who is alleged to be impersonated by the present appellant.

Per contra, learned counsel for the respondent/state opposed the prayer and submitted that the first application for suspension of jail sentence was dismissed as withdrawn on 08.01.2024 without any liberty. There is no changed circumstances. He argued that as per testimony of PW No.1 Radheshyam, care taker of the hostel and PW No.2 Prabadh Jain, manager of the hostel they

identified the accused persons in the identification parade, which was conducted in the presence of Executive Magistrate PW No.17 Smt.Sunita Shahni. Apart from that, the seized explosive substance was sent to FSL and the FSL report is positive. There are call details between the present appellant and the co-accused Ashish. The co-accused was working in Lokayukt office and they conspired to keep a bag with explosive substance in the hostel by impersonating himself in the name of Sajish Khan to create disturbance during Sehast occasion at Ujjain in order to show the involvement of a particular community for creating disturbance. In the seized articles, apart from forged aadhar card, four mobile and sims, papers written in Urdu were also kept in the bag. PW No.23 Mahesh Chandra Sharma, who was working as Sub-Inspector in the police station deposed that the Manager of the hostel informed on 19.03.2016 that one person Sajish Khan S/o Vahid Khan R/o Agar Malwa Road visited around 7-7:30 in the evening of 18.03.2016 and gave the ID and he was allotted room no.212. He said that he will come back after having food in 10 minutes, kept his black bag in the room and did not come back. In response to the said information, the police alongwith Bomb Detection and Disposal Squad (BDDS) team and went to the incident place, opened the door of the room no.212 in front of Manager Prabadh Jain and Care Taker Radheshyam. Seized the black travel bag, a mobile phone charger and a sim. BDDS team and dogs examined the bags and found explosives and electronic circuit in the bag. The BDDS team opened the bag in the park situated in front of the hostel and found many items for which a memo was made.

During the investigation, cyber cell found call details between Sushil Mishra and Ashish and found that Ashish edited the aadhar cards in his Samsung Grand II mobile and transferred it to the mobile phone of Sushil

Mishra. Sushil Mishra took the print out of forged aadhar card and photos. On the basis of these aadhar cards and photographs, he took the sim of DoCoMo company from Rahul Kushwah who identified the forged aadhar card and photos and provided the sim card to Sushil Mishra.

It is alleged that the appellant on the instructions of Ashish Singh made calls in the Lokayukt Office so that if it is traced it would be lokayukt office and took another sim card of Idea company by different aadhar card from Ravi. Both these sims were bought by forged aadhar card and muslim names were mentioned on the aadhar cards. Handwritten papers in urdu language were left at the incident place so that it looks like Muslim Organization is involved in the crime. Thus, testimony of PW No.23 Mahesh Chandra Sharma and PW No.9 Vivek Gupta clearly establishes the prosecution case and motive of the appellant and the co-accused person for creating disturbance during the occasion of Sinhasht giving it colour of involvement of Muslim organization.

In the statement of PW No.1 Radheshyam, in regard to first submission of learned counsel for the appellant, PW No.1 stated that the CCTV is installed. However, the said witness did not depose whether the CCTV was in working condition or not. PW No.9 Vivek Gupta had clearly stated that he could not notice the CCTV in the hostel. Thus, the evidence does not establish the installation and working of CCTV at the hostel at the relevant time. The prosecution had clearly proved its case by identification parade in which PW No.1 Radheshyam and PW No.2 Prabadh Jain have identified the accused persons that he had come to the hostel alongwith bag and kept it in the room no.212 of the hostel. The identification parade was conducted by Nayab Tehsildar PW No.17 Sunita Shahni.

In view of the testimony of PW Nos.1, 2 and 17, this court prima facie does not find any infirmity in the identification parade conducted by the prosecution. The judgment relied upon by the learned counsel for the appellant would not render any assistance to the facts of the present case. In the present case, the prosecution has otherwise established the commission of offence by the appellant by identification by PW No.1 Radheshyam, care taker of the hostel and PW No.2 Prabadh Jain, manager. FSL report Exb.P/51 has proved that the seized substance was explosive. There are call details between the present appellant and the co-accused Ashish which has proved the motive.

So far the other contention of the appellant that the prosecution has failed to explain that on what information they reached the place of incident has also no merit. As per the testimony of PW No.23 Mahesh Chandra Sharma and PW No.2 Prabadh Jain, it is clear that the intimation was sent by the Manager of the hostel to police station and then the police acted on the said information. PW No.9 Vivek Gupta has clearly deposed that the aadhar card was found to be fake and there was no such person in such name and therefore, there was no need to know the whereabouts of so called Sajish Khan.

In view of the aforesaid assimilation of facts and evidence and considering the serious nature of offence to create communal disturbance the occasion of Sinhasat at Ujjain in order to show the involvement of Muslim organization by creating fake identity of a muslim person and urdu papers, this Court does not find any case for grant of suspension of jail sentence.

Accordingly, IA No.5351/2024 stand dismissed.

(VIJAY KUMAR SHUKLA)
JUDGE

