
(2013) 05 BOM CK 0043

In the Bombay High Court

Case No : Criminal Bail Application No. 512 of 2013

Shamil Saquib Nachan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 227, 228
Maharashtra Control of Organised Crime Act, 1999 — Section 21(4), 23, 3(1)(ii), 3(2), 3(4)
Penal Code, 1860 (IPC) — Section 120B, 153A, 307
Unlawful Activities (Prevention) Act, 1967 — Section 15, 16, 18, 43D

Citation : (2013) 4 ABR 1419 : (2013) ALLMR(Cri) 2273

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Rebecca Gonsalves, for the Appellant; A.S. Gadkari APP, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Thipsay, J.—The applicant is one of the six accused in M.C.O.C. Special Case No. 10 of 2012, pending before the Special court under the Maharashtra Control of Organized Crime Act (hereinafter referred to as M.C.O.C. Act), Thane. The said case is in respect of offences punishable under Sections 120B, 153A, 307 of the Indian Penal Code (IPC), offences punishable under the Arms Act, apart from the offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the M.C.O.C. Act. Additionally, the applicant and the other accused are alleged to have committed offences punishable under Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967, as amended till 2008 (hereinafter referred to as U.A.P. Act). By the present application, the applicant seeks bail. I have heard Ms. Rebecca Gonsalves, the learned counsel for the applicant, and Mr. A.S. Gadkari, the learned APP for the State. With the assistance of the learned counsel, I have gone through the bail application, the annexures thereto, and all the relevant parts of the charge-sheet. I have also been taken through the affidavit filed by

the Investigating Officer for opposing the grant of bail.

2. The prosecution case has been described in Column No. 16 of Form 5E of the printed prescribed proforma of the charge-sheet. In brief, it can be described as follows:

The first informant Manoj Raicha, Advocate, is an active member of the Vishwa Hindu Parishad, and Gowvansh Saurakshan Samiti. He had, in the past, got the cattle brought in Bhiwandi for Qurbani on the occasions of Muslim religious festivals, taken charge of and sent to Gowshala. The accused no. 1 Saquib Nachan, therefore, formed a belief that Mohan Raicha was doing injustice on Muslims and entertained grudge against him. He had given threats to Manoj Raicha in the year 2011 in the court campus itself. Because of this grudge, the accused no. 1 Saquib Nachan conspired with other accused, namely, accused no. 2 Guddu alias Mohammad Hafiz Khan, accused no. 3 Shamil Saquib Nachan i.e. the applicant, accused no. 4 Akif Atik Nachan, accused no. 5 Tanveer Abdul Majid Zamindar and accused no. 6 Abu Bakar Rashid Shaikh. In pursuance of the conspiracy, the accused no. 6 Abu Bakar, fired at Manoj Raicha on 3.8.2012, causing injury to his shoulder, by a bullet.

3. How the incident which gave rise to this case, took place and how the investigation commenced, can be ascertained from the First Information Report (FIR). The facts, as narrated by Manoj Raicha, in FIR, are to the effect that on 3.8.2012, while he was travelling by his car, with his armed police bodyguard Achrekar - Police Constable No. 3901 - three shots were fired at him from a fire arm. One bullet grazed his right upper arm. His bodyguard got down from the car, but could not see any one. Thereafter, Manoj and his bodyguard Achrekar, came to the police station and lodged a report on the basis of which, a case was registered in respect of offences punishable under Sections 307, & 120B of the IPC and offences punishable under the Arms Act, at Nizampur Police Station, Bhiwandi. The investigation was then transferred to Crime Branch Bhiwandi, under the orders of Commissioner of Police, Bhiwandi, Thane, and thereafter, the provisions of Section 153A of IPC were added to the original FIR. In the course of investigation, it was revealed to the Investigating Officer that the attack on Manoj Raicha was a "part of larger conspiracy" and that the same was carried out at the instance of the accused no. 1 Saquib Nachan. It was also revealed to be an act of an organized crimes syndicate. In the course of further investigation, it was also revealed that it was a "terrorist act" as contemplated u/s 15 of the U.A.P. Act, 1967.

4. Ms. Rebecca Gonsalves, the learned counsel for the applicant contended that the investigation is not at all sincere. She contented that no case of an offence punishable under the M.C.O.C. Act and/or the U.A.P. Act is made out. She submitted that, in any event, there is absolutely no material in the entire charge-sheet to make out a prima facie case of any offence against the applicant. It is submitted that the applicant has been falsely implicated in the present case. It is submitted that the applicant is a student of Engineering with no antecedents and

has been implicated basically because he happens to be the son of Saquib Nachan (accused no. 1), who was accused in a number of cases and has been convicted in one case previously. Mr. Gadkari, on the other hand, submitted that the provisions of the M.C.O.C. Act and also of the U.A.P. Act have rightly been invoked, and applied to the present case. As regards the role of the applicant, he submitted, that the applicant is a conspirator and had conspired with the other accused to commit the offences in question. According to him, there is sufficient and satisfactory material to show the involvement of the applicant in the alleged offences.

5. Before proceeding further, it may be observed that there is much that can be said about the manner in which the facts of the case are mentioned in the charge-sheet. The emphasis is not on the incident of firing but the emphasis is on the activities of Manoj Raicha, as a member of the Vishwa Hindu Parishad and Gowvansh Saurakshan Samiti. The emphasis is on the criminal background of the accused no. 1 Saquib Nachin, on his gang, on his alleged anti-national activities, on his having committed a number of serious offences such as bomb blasts etc. in the past, on it having been established that he has connections with Kashmiri and Khalistani terrorists, etc. That, the accused no. 1 had committed offences with the object of creating a rift between Hindus and Muslims and "to cause communal riots, so that the sovereignty of the nation would be affected", that the intention of accused no. 1 Saquib Nachan was "to create anarchy and disorder in the country" and he desired that there should be outrage amongst the Muslims as well as the Hindus, etc. That, accused no. 1 Saquib Nachin has written a book in which the government and the judiciary are criticized, suggesting that injustice is being done to Muslims. Thus the firing at Manoj Raicha, on the showing of the prosecution, is only an entirely small and an incidental - so to say - action of the accused no. 1 Saquib Nachin, whose aims, ambitions and objects are quite different, and as mentioned above.

6. A number of contentions which are relevant for judging the prima facie truth of the prosecution case with respect to several material aspects thereof as projected by the investigating agency, have been raised by the learned counsel for the applicant. Indeed, much can be said about the prosecution case and the applicability of the offences punishable under the M.C.O.C. Act and the U.A.P. Act, to the facts of the present case. However, since I am dealing with a bail application and since the role attributed to the present applicant in the alleged offences is, admittedly, limited, I refrain from discussing the broader aspects and broader issues except where such discussion would be necessary in the context of the present bail application.

7. Apart from the contentions raised about the unreliability of the material against the applicant, the learned counsel for the applicant advanced a number of arguments suggesting that a doubt exists even as to whether the first informant was indeed fired at. She referred to the nature of injury sustained by Manoj Raicha; the location thereof, and the absence of any hole at that place on

the shirt of Manoj Raicha. She also pointed out that though the FIR specifically states that the person or persons who fired at Manoj were not seen by him, or even by his bodyguard Achrekar, in the supplementary statement, Manoj Raicha claimed that his bodyguard had seen one person while running away.

8. I have considered the matter. There is undoubtedly some substance in the contentions raised by the learned counsel. Interestingly, Manoj and his bodyguard had been together after the firing and had gone to the Police station together before lodging the FIR. The bodyguard was present when the FIR was being registered and in spite of this, a categorical statement that the bodyguard had not seen anyone, was made in the FIR. Prima facie, it is difficult to accept that though the bodyguard had seen one person - supposed to be the assailant - running away after the incident of firing, the first informant, who was throughout with him, and had discussion with him after the incident, had gone with him to the Police station, would be sure that the bodyguard had not seen anyone and would categorically state so in the First Information Report, when the bodyguard had actually seen a person.

9. Coming to the role attributed to the applicant, admittedly, he is not the person who allegedly fired at Manoj Raicha. He is alleged to be one of the conspirators in respect of the conspiracy to attack and kill the first informant. The conspiracy was, allegedly, hatched in a meeting which took place between the applicant and the other accused at Oye Punjabi Dhaba on the second or third day of the commencement of the holy month of Ramzan.

10. The learned APP did not dispute that the only material against the applicant consists of statements made by four persons and the Call Data Records (CDRs) in respect of his mobile telephone. The statements of the said four persons recorded during investigation have been truncated suitably to prevent disclosure of identity of the said persons. This has been done on the ground that the case is in respect of offences under the M.C.O.C. Act, and that, there would be a danger to the life of the witnesses if their identity is revealed. These persons are, therefore, referred to as "A" "B" "C" and "D".

11. According to the witness "A", whose statement has been recorded on 4.9.2012, he had met the accused no. 5 Tanveer Abdul Zamindar sometime after two days from the commencement of the holy month of Ramzan, and it was suggested to him by the accused no. 5 Tanveer that they both would go out in the night for dinner. Accordingly, at about 9.30 p.m., they met at a particular place where the accused no. 5 Tanveer took "A" to Oye Punjab Dhaba, situate at Nasik Road, and they reached there at about 10.15 p.m. That, the accused no. 4 Akif Nachan, the applicant, accused no. 6 Abu Bakar, and accused no. 2 Guddu, were already sitting there. During the talks, the applicant reportedly said as follows:

Translated in English, it would read thus:

Abba (meaning the accused no. 1 Saquib Nachan) is very much disturbed. Now,

after Ramzan, Bakr-Id will come. Like every year that kamina Manoj Raicha would get our animals caught and cause trouble to the Muslims." Some how he has to be killed this year.

(The last sentence is not in the inverted commas, though it is also projected as the utterance of the applicant. The learned APP could not explain why it is so.)

According to "A", Abu Bakar, thereafter, said that he would shoot Manoj Raicha. Thereupon, accused no. 5 Tanveer Zamindar agreed to pay money to purchase a pistol. Thus, it was in the presence of witness "A" that a conspiracy to kill Manoj Raicha was hatched.

12. The statement of witness "A" was got recorded by a Magistrate under the provisions of Section 164 of the Code of Criminal Procedure (Code). In this statement, witness "A" did not advance this version. He did not speak about any meeting in Oye Punjab Dhaba and on the contrary, did not even make a mention of the applicant. When this was pointed out by the learned counsel for the applicant, the learned APP pointed out that one more statement of the said witness, also u/s 164 of the Code, was recorded, wherein the witness has stated about accused no. 5 Tanveer Zamindar having taken him to Oye Punjab Dhaba, and about this witness having met accused no. 2 Guddu, the applicant, accused no. 4 Akif, and accused no. 6 Abu Bakar there. As per this statement, there was discussion among the accused persons that Manoj Raicha was acting against the Muslims, and that something was to be done in that regard; and then one of the accused persons said that Manoj Raicha would be required to be killed. Thus, though in this statement, this witness has gone near his version, reflected in his statement recorded u/s 161 of the Code, there is still, a marked difference in both the versions.

13. As regards witness "B", he is a person who happened to be present in the Oye Punjabi Dhaba on the third day of the holy month of Ramzan. That, he saw the applicant, accused no. 4 Akif Nachan, accused no. 5 Tanveer and two to four more persons in the Dhaba. The applicant and the others sat on a table behind the table on which witness "B" was sitting. They had, however, not seen the witness "B." At that time, witness "B" heard Akif Nachan talking about Manoj Raicha and saying that:

Translated in English, it would read thus:

Saquib Bhai has said that "harami Manoj Raicha was creating trouble for the Muslims by getting the cattle brought for qurbani. Saquib bhai has told to finish Manoj Raicha in the same manner in which he had finished Lalit Jain and Advocate Sherekar.

On this, the applicant, according to this witness said as follows:

Translated in English, it would read thus:

Abba is very much upset. Do anything to kill Manoj Raicha, under any

circumstances. Whatever would happen, I will take care of.

According to witness "B", accused no. 5 Tanveer and the others agreed with the applicant and accused no. 4 Akif Nachan, and started talking about a plan to kill Manjo Raicha. Since this witness found this objectionable, he (and the person with whom he had gone) left the Dhaba after taking parcel. Even the statement of this witness was recorded u/s 164 of the Code, and though the version therein is not identical, in that statement also, he implicated the applicant.

14. The statement of witness "C" shows that on 3.8.2012, after the incident of firing, accused no. 6 Abu Bakar, and accused no. 2 Guddu, came near a hotel and at that time, Abu Bakar told (to whom is not mentioned in the statement, but it may be presumed that it was to this witness) that "he had fired towards Manoj Raicha, but had missed, and when he told this fact to the accused no. 4 Akif Nachan and the applicant Shamil Saquib Nachan, they were very angry with them (accused no. 6 Abu Bakar and accused no. 2 Guddu) and left by saying that what answer they would give to Saquib bhai - (accused no. 1)."

15. Similar is the statement of witness "D".

16. Thus, the material against the applicant consists of two circumstances. The first is that the witnesses have seen and heard him and other accused, conspiring to kill Manoj Raicha; and the second is that, after the incident, the actual shooter Abu Bakar, allegedly said that when he informed the applicant and the co-accused - accused no. 4 Akif Nachan that the target was missed, the applicant and Akif Nachan were very angry and questioned as to what reply they would give to accused no. 1 Saquib bhai.

17. Undoubtedly, the material found in the charge-sheet is to be taken at face value at this stage. However, taking the material at face value does not mean that it has to be accepted as gospel truth. It also does not mean that no evaluation of the material at all is to be done at this stage. Though the evaluation of the material, as if it is evidence adduced during the trial (on the basis of which the judgment of acquittal or conviction is to be given) cannot be done at this stage, a limited evaluation thereof for ascertaining the existence of a prima facie case would be unavoidable. This would be all the more necessary, when the case relates to offences punishable under any Special Act, which contains provisions curtailing the discretion of the courts of law in the matter of grant of bail. The observations made by Their Lordships of the Supreme Court of India in the case of *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Another*, , indicate that in view of the drastic provisions curtailing the discretion of the court in the matter of bail, a little deeper probe into the matter - than is ordinarily done at the stage of bail - may be necessary in such cases to avoid injustice. This is particularly so, because, the scheme of the relevant provisions in the M.C.O.C. Act clearly requires participation of superior police officers at various levels.

18. If the prosecution case, as a whole, is considered, doubts can legitimately be

entertained about the truth of the details regarding actual occurrence. This, coupled with the manner in which the case is projected, makes it prudent to see whether this material is corroborated by any other material in the charge-sheet, before coming to a conclusion about the existence of a prima facie case against the applicant. It is because, all these statements, which are the only statements showing the involvement of the applicant in the alleged offences, have been recorded after the arrest of the applicant on 29.8.2012. A question legitimately arises about the basis on which the applicant came to be arrested before this information (which is admitted to be the only material available against the applicant). According to the version of the applicant, as reflected in the bail application, he came to be arrested on 29.8.2012, when he had gone to the court to meet his father Saquib Nachan (accused no. 1), who was being produced before the court of Magistrate on that day, for obtaining his remand. Under the circumstances, the possibility of these statements having been tailored after the arrest of the applicant cannot be altogether be ruled out, and therefore, it would be necessary to see whether this material is corroborated by some other material.

19. The learned APP submitted that the theory of a meeting at the Oye Punjabi Dhaba is corroborated by the CDRs in respect of the mobile telephone instruments belonging to the applicant and the other accused. According to him, the tower locations reflected in the CDRs show that the applicant was, at the material time, present at the spot i.e. at Oye Punjabi Dhaba, and was also present near the spot of incident, on the date of commission of the offence. In this context, the learned counsel for the applicant pointed out that the CDRs of the other accused, who were supposedly present at that time, however, did not support the theory of they being present at Oye Punjabi Dhaba. The learned APP could not controvert this and could not show from the CDRs of the other accused persons that they were present at Oye Punjabi Dhaba. Infact, the learned APP conceded that the tower location in respect of the mobile telephone instruments of the other accused does not show the presence of any of them at Oye Punjabi Dhaba, but contended that the mobile telephone instruments "could have been given by the accused to someone else" and "it might not have been with the accused persons at that time." It is clear that, that the tower location reflected in the relevant CDRs does not support the theory of the other accused being present at the Oye Punjabi Dhaba was noticed by the trial court also, but no importance to that was attached on the ground that the mobile telephone instrument need not necessarily be with the holder or the subscriber, all the time. Though this is theoretically possible, there is no evidence that the mobile telephone instruments were parted with by the other accused. The prosecution cannot throw the weight of the tower location for supporting the theory of the applicant's presence at Oye Punjabi Dhaba, but at the same time, refuse to attach any weight to the same circumstance, when it is sought to be used by the accused for supporting the theory of they being elsewhere. Infact, that the CDRs of the other accused, who were allegedly present in Oye Punjabi Dhaba, show

their presence elsewhere, is a factor which leads to serious doubt - to say least - about the theory of conspiracy. I refrain myself from going further and discussing whether this would prove fatal to the theory of conspiracy, but I have no hesitation to record an observation - a rather guarded one - that the prosecution theory is certainly open to doubt.

20. There are a number of other aspects which need to be kept in mind. The FIR shows that the bullets had been fired from the right side of the car by which Manoj Raicha was travelling, and that, one bullet had entered through right side window and had passed through the car, after grazing his right upper arm. Undoubtedly, an injury was sustained by him, but it is not of such a nature, as can be opined medically to have been caused only by a fire arm. The shirt of Manoj Raicha was intact and no hole thereto was noticed. When this was pointed out to the court, the learned APP submitted that the sleeves had been folded by Manoj Raicha, but certainly the matter would require further examination.

21. A perusal of the order passed by the trial court shows that it was argued before it that the statement attributed to witness "B" reproduced above, to the effect that "Abba bahut gusse mein hai. Abhi Ramzan ke baad mein Bakr-Id aanewali hai" is wrong and that not "Bakr-Id", but "Ramzan-Id" comes after the holy month of Ramzan. It was argued before the trial court that no Muslim would make such an erroneous statement, and therefore, it was doubtful whether such statement was indeed made. On this, the trial court reasoned that after Ramzan, after about two months thereafter, Bakr-Id also comes, and therefore, the statement that Bakr-Id will be coming after Ramzan would not be wrong. It is difficult to agree with this sort of reasoning. The time cycle goes on and on, and therefore, it is possible even to say that Ramzan-Id would come after Bakr-Id. However, this is not how persons express themselves ordinarily. I find substance in the contention raised in that regard. In my opinion, the prima facie unlikelihood of a Muslim saying that after Ramzan, Bakr-Id would come, ignoring the Ramzan-Id that would come before that, needs to be given due thought, and needs to be taken into consideration, as one of the factors relevant in judging the prima facie truth of the prosecution case.

22. The difficulty in granting bail arises primarily because of the application of the provisions of the M.C.O.C. Act and of the U.A.P. Act, to the facts of the present case, as both these statutes contain provisions curtailing the discretion of the court in the matter of grant of bail to a great extent. Coming to the provisions of the M.C.O.C. Act, Section 21(4) thereof, lays down that a person accused of having committed an offence punishable under the M.C.O.C. Act, is, (where the Public Prosecutor opposes the application) is not to be released on bail, unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence, and that, he is not likely to commit any offence while on bail. Similarly, subsection (5) of Section 43-D of the U.A.P. Act also lays down that a person accused of having committed certain offences under the said Act, shall not be released on bail if there are reasonable grounds for

believing that the accusation against such person is prima facie true. How such phrases, curtailing the discretion of the court in the matter of releasing a person on bail should be construed, needs to be ascertained from other relevant provisions in such statutes.

23. So far as the provisions of Section 21(4) of the M.C.O.C. Act are concerned, the authoritative pronouncement of the Supreme Court of India in the aforesaid case of Ranjitsing Sharma (supra), lays down how the restrictive phrase appearing therein is to be construed.

24. In the said case, Their Lordships of the Supreme Court of India, held that the restrictions imposed by Section 21(4) of the M.C.O.C. Act on the power of the courts cannot be pushed too far. It is not as if a person can be released on bail only if there would be no grounds for proceeding against him at all on the charge of an offence punishable under the M.C.O.C. Act. The said provisions are required to be interpreted in a reasonable manner. They cannot be interpreted in such a manner so as to make the grant of bail impossible. It is not that the court is required to come to a positive finding that the applicant for bail is not guilty of an organized crime before grant of bail.

25. A careful analysis of the relevant provisions and the observations made by the Supreme Court of India in the aforesaid case of Ranjitsing Sharma (supra), lead to the following conclusion about the correct legal position in that regard. For enabling the court to exercise its discretion in favour of a person accused of having committed an offence punishable under the M.C.O.C. Act, what is required is existence of reasonable grounds for believing that the applicant before the court is not guilty of an organized crime. The satisfaction that the "accused is not guilty" is not contemplated by the relevant provisions and what is required is the satisfaction that there are reasonable grounds for believing the accused to be not guilty. Again, the phrase "reasonable grounds" should not be confused with the phrase "sufficient grounds" It imports a lesser degree of satisfaction than "sufficient grounds." It cannot be lost sight of that the Special court would be entitled to discharge an accused if it considers that there is no sufficient ground for proceeding against the accused. If the court forms an opinion, that there is ground for presuming that accused has committed an offence punishable under the M.C.O.C. Act, a charge shall be framed against the accused. This is clear from the provisions of Section 9(4) of the M.C.O.C. Act, read with Sections 227 and 228 of the Code of Criminal Procedure. It cannot - even remotely - be suggested that the special provisions regarding grant of bail in the M.C.O.C. Act are to be interpreted in such a manner, so as to mean that it is only when there would be no sufficient grounds for proceeding against an accused, that he shall be released on bail. If such a view is taken, no person who has been granted bail, can ever be proceeded against, in respect of an offence punishable under the M.C.O.C. Act. Rather, there would be no question of granting bail, and an accused would be discharged at that stage itself. Since this is not intended or contemplated while enacting the relevant provisions regarding

bail, the special provisions are to be interpreted by keeping in mind that the phrase "reasonable grounds for believing that he is not guilty of such offence" cannot be so construed as to make it irreconcilable with the existence of ground for presuming that he has committed such offence.

26. The restrictive provision u/s 43-D of the U.A.P. Act with respect to the grant of bail is not similar to the one contained in the M.C.O.C. Act, and has been worded differently. It contemplates that a person accused of having committed an offence punishable under Chapter IV and Chapter VI of the U.A.P. Act shall not be released on bail if there are reasonable grounds for believing that the accusation against such person is prima facie true. Perhaps, this phrase puts a greater restriction on the powers of the court than is put by the aforesaid provision of the M.C.O.C. Act. However, inspite of the difference in the phraseology, there would be no basic difference in the practical application of these provisions. All that these provisions lay down is that a person arrested on the accusation of having committed the offence contemplated by the said provisions should not be released on bail, if there would be a prima facie case of such offence against him. If a rational and reasonable doubt is felt in that regard, then the court would not be precluded from granting bail even in such cases. Moreover, judging the existence of a prima facie case at the stage of bail, would not be the same as judging the existence of a prima facie case for proceeding against an accused by framing a Charge.

27. It is too obvious that an accused would never be required to put forth a stronger case for bail, than that would be required for a discharge. The tests that are applied at the time of bail cannot be as rigorous as are applied while considering the discharge of an accused from a particular case. The position as to when an accused can be discharged has not been changed by the legislature in cases of the offences punishable under the M.C.O.C. Act and the U.A.P. Act, inspite of introducing provisions curtailing the discretion of the court in the matter of grant of bail - although only in the event of the application being opposed by the Public Prosecutor.

28. In this case, the applicability of the provisions of M.C.O.C. Act and of the U.A.P. Act, is highly doubtful. I have examined the "prior approval" and the sanction granted u/s 23 of the M.C.O.C. Act, and much can be said on the applicability of the M.C.O.C. Act to the facts of the present case. The applicant has been charged also of having committed an offence punishable u/s 16 of the U.A.P. Act, namely, for "terrorist act". Going by the definition of a "terrorist act" u/s 16 of the Act, whether the allegations levelled against the applicant can be brought within the purview of the relevant provision, is - to say the least - is extremely doubtful. It was initially suggested that the offence in question was committed for pecuniary gain. Later on, it was suggested that it had been committed with the object of promoting insurgency. The case, as put forth, is that the accused no. 1 Saquib Nachan was angry because of the acts of Manoj Raicha and wanted to kill him to take revenge of the acts of Manoj Raicha in

getting the cattle brought for qurbani taken charge of, and send to goushala. It is also suggested that actually the firing was done with the intention of causing rift between Hindus and Muslims and with the intention that there should be communal riots. There is substance in the contention of the learned counsel for the applicant that the motives and objectives alleged by the prosecution behind the act of firing at Manoj Raicha, which is the basis of the case, are conflicting and inconsistent. Infact, considering the nature of an organized crime and the mens rea requisite for the same, it is difficult to hold that the same act or acts would also fall within the definition of a "terrorist act", the mens rea requisite for which, would be quite different from that in case of an organized crime. However, the matter may be left at that for the present, as, in any case, on facts, and on a fair reading of the material against the applicant; and considering the same in the light of the entire prosecution case, there are certainly reasonable grounds for believing that the applicant is not guilty of any of the alleged offences.

29. The applicant is a student. He is 21 years old. There are no antecedents.

30. In my opinion, the applicant should be released on bail, subject to certain conditions.

31. The application is allowed. The applicant is ordered to be released on bail in the sum of Rs. 15,000/-, with one surety in the like amount, on the condition to report to the office of the Investigating agency on every alternate Saturday, till the disposal of the case against him.

The applicant may deposit cash of Rs. 15,000/- in lieu of surety.

LATER ON AT 3.00 P.M.:

After the order was pronounced in the morning session, Mr. Gadkari, the learned APP who was not present then, mentioned the matter and prayed for stay on the operation of the order. The counsel for the applicant is not present. Under the circumstances, the prayer to stay the operation of the order is rejected.