

**ORDER BELOW EXH.1 IN SESSIONS CASE NO.706/2016**  
**(CNR : MHPU01-011704-2016)**

1. Heard learned Special P.P. Mr. Suryawanshi, learned advocate for accused Mr. Ichalkaranjekar and advocate/accused Mr. Punalekar on the point of framing of charge. Perused charge-sheet.

2. Learned Special P.P. Mr. Suryawanshi has unfolded the case of prosecution by referring to statements of different witnesses and argued that there was motive with the accused persons to assassinate deceased Dr. Dabholkar. He has referred to the statement of Sanjay Sadwilkar to show how the weapons were procured and how the preparation was made by the accused persons. He then referred to reconstruction panchanamas and statements of accused recorded by Forensic Expert Nilesh Wagh. Based on the reconstruction panchanamas and statements of accused Nos.2 and 3, the learned Special P.P. demonstrated the connections of accused Nos.1 and 5 with the shooters i.e accused Nos.2 and 3. He has also referred to statement of witness Somnath Dhayade which appears extra judicial confession of accused No.2. He has also pointed out statements of eye-witnesses as a supporting evidence.

3. Referring to the statements of accused Nos.2 and 3 and the re-construction panchanamas, the learned Special P.P. argued that the accused No.4 has knowingly caused disappearance of evidence i.e. the weapons used in the present

case and he is liable to be prosecuted for the offence punishable under Section 201 of I.P.C.

4. Learned Special P.P. has argued that there is sufficient material to frame charge against all the accused for the offences punishable under Sections 302 r/w 120-B, 120(B), 302 r/w 34 and 201 of I.P.C., Section 3 r/w 25, 5 r/w 27(1) and 7 r/w 27(3) of the Arms Act and Section 16 of the Unlawful Activities (Prevention) Act (UAPA).

5. Learned advocate Mr. Ichalkaranjekar has argued that there is no sufficient evidence on record to frame charge against any of the accused. According to him, the panchamas and statements of accused referred to by the prosecution are inadmissible in evidence and therefore those cannot be made basis for framing of charge, that statements recorded before any Forensic Expert cannot be based for framing of charges, there is no independent evidence available against any of the accused, the extra judicial confession of one of the accused also cannot be made basis for framing of charge against other accused or against him also.

6. The learned advocate has pointed out discrepancies in the prosecution evidence. It is argued that firstly the prosecution had taken a stand that deceased Dr. Dabholkar was murdered by some other persons. The said story was give go bye and without obtaining permission of reinvestigation, the accused Nos.2 and 3 have been falsely implicated. According to

him, there is no proper sanction for application of UAPA. Also, considering the facts of the case, provisions of UAPA cannot be applied.

7. According to learned advocate Mr. Ichalkaranjkar there is absolutely no evidence against accused No.1 and accused No.5 and they have been falsely implicated only because the investigating officer found it convenient to do so, as there was enmity between accused No.1 and deceased and there was a previous case in which accused No.5 was convicted.

8. Accused/advocate Mr.Punalekar has argued that except the statement made by accused in panchanama there is absolutely no evidence to show that under his advice or ill-advice any evidence in the case has been destroyed, that the statement in panchanama is not admissible in evidence, it is hit by Section 25 of the Evidence Act, that there is no other evidence to make basis for framing of charge and therefore no charge can be framed against him.

9. I have carefully gone through the entire charge-sheet. As referred above, following evidence is available against the accused :

*i) Statements of wife, brother and other witnesses to show that the deceased was doing work of 'Andhashradha Nirmulan Samiti' (अनिस) vigorously. Whereas the accused No.1 was against his views and ideology. Accused No.1 was an office bearer of Sanatan Sanstha, which had developed hatred and enmity with deceased Dr.Dabholkar and 'Andhashradha Nirmulan*

*Samiti' (अंनिस).*

*ii) Statement of Sanjay Sadwilkar and of other witnesses show that accused No.1, being an office bearer of Sanatan Sanstha, and due to his individual animosity, was intending to commit murder of Dr. Dabholkar and charted out a plan for execution. Weapons for assassination were procured by accused No.1.*

*iii) Statement of Gouri Aphale of Sanatan Sanstha and the picture drawn by her denotes the extent to which the accused No.1 and the members of Sanatan Sanstha could go to eliminate their so called rivals or enmities.*

*iv) Reconstruction panchanamas drawn at the instance of accused Nos.2 and 3 coupled with their statements recorded by Nilesh Wagh, who is not a policeman, shows as to how the conspiracy to assassinate Dr. Dabholkar was hatched, and how it was executed. This evidence explains roles of the accused persons. This evidence also explains the complicity of accused No.4 in causing disappearance of the evidence in the case.*

*v) Extra judicial confession made by accused No.2 to witness Somanth Dhayade.*

*vi) Statements of eye-witnesses who have identified accused Nos.2 and 3 during investigation.*

10. When the above evidence is read together, what can be gathered is that a conspiracy to eliminate Dr. Dabholkar was hatched by accused Nos.1 to 3 and 5 so as to create a terror in the mind of the people at large that no one should undertake the work as of 'Andhashradha Nirmulan Samiti' (अंनिस). What appears is that murder of Dr. Dabholkar was aimed to be murder of the ideology he was carrying and the work he was doing.

Such activities are certainly covered under Section 16 of the UAPA. It cannot be said that the only cause for murder of Dr. Dabholkar was enmity with accused No.1. It was a hatred developed by Sanatan Sanstha against deceased which was headed by the accused No.1.

11. Learned advocate for the accused has relied upon the judgment in *Malegaon Bomb Blast 2006 case, Dhan Singh Vs. Union of India Through National Investigation Agency and others, 2019 SCC OnLine Bom 5721*. In the said case initial investigation was done by ATS, then it was taken up by CBI and then it was taken up by NIA. On completion of investigation, NIA submitted the charge-sheet against different persons than the accused made previously by ATS and CBI. On this ground bail was granted to the accused persons by the Hon'ble High Court.

12. The facts of the above cited case are different than the case at hand. The material placed before the Court in this case has to be scrutinized independently. Further the subject involved in the said proceeding was of bail of the accused. At this juncture, the present case is for framing of the charge. Therefore, the observations in the above cited case are not helpful to the accused persons to get discharged.

13. Learned advocate for the accused has cited following two judgments :

i) *Raja alias Ayyappan Vs. State of Tamil Nadu, 2020 SCC*

***ONLine SC 346***

- ii) Babu @ Fakkrudeen Vs. The State, Rep. By the Station House Officer, Odiansalai Police Station, Union of Punducherry, Cri. O.P.No.20793 of 2019***

The ratio laid down in the above two judgments is that the confessional statements made by the accused persons when they are in custody in police are inadmissible in evidence. There can be no dispute about this legal proposition. However, in the case at hand, there is other evidence available against the accused persons, as mentioned above. Therefore, the observations in the above cited cases do not make the accused entitled for discharge.

14. It is argued on behalf of the accused that CBI did not take permission for re-investigation, that entire case is re-investigated and the accused are changed. According to the learned advocate for accused unless permission of the Court is taken for reinvestigation, it is illegal and therefore the Court cannot frame charge on the basis of the charge-sheet filed by CBI. Learned advocate for the accused has cited following judgments :

- i) Belair Corporation Pvt. Ltd., Chennai Vs. State, 2018 CRI.L.J. 868 :: (2017) 4 MAD LJ(CRI) 754***
- ii) Vinay Tyagi Vs. Irshad Ali @ Deepak & Ors., arising out of SLP (Crl.) No.9185-9186 of 2009***

*iii) Kunjalata Dei Vs. State of Orissa, Orissa High Court*

*iv) Md. Abdul Rokib Vs. State of Assam 2018 CRI.L.J. 2049 :: (2017) 4 GAU LT 383*

Whether the investigation carried out by CBI in this case is 'further investigation' or 're-investigation' is a matter to be decided by the Court after taking evidence on record. At this stage of the trial, accused cannot claim discharge. While continuing the investigation, if the investigating agency finds that some other persons are involved in the crime, those can be added as accused. Similarly, if the investigating agency finds that a person has been wrongfully made an accused in the case, he can be discharged. For this purpose, reinvestigation is not necessary. Therefore, no discharge is possible on this ground.

15. The evidence, above referred, cannot be said to inadmissible. The evidentiary value of the evidence depends upon its quality. The reliability of the evidence is a matter of judicial scrutiny which has to be done by the Court at conclusion. Thus, I find that there is sufficient evidence to frame charges against the accused Nos.1 to 3 and 5 for hatching conspiracy to commit murder of Dr. Dabholkar and for executing the plan, using firearms i.e. offences punishable under Sections 120-B, 302 r/w 120-B alternatively 302 r/w 34 of I.P.C., under Section 16 of the Unlawful Activities (Prevention) Act, under Sections 3 r/w 25, 5 r/w 27(1), 7 r/w 27(3) of the Arms Act. Also, charge needs to be framed against the accused No.4 for offence of causing disappearance of evidence, punishable under

Section 201 of I.P.C. Accordingly, charges are framed.

Sd/-

Pune

Dt. : 07/09/2021

(S.R. Navandar)

Additional Sessions Judge, Pune



**CERTIFICATE**

I affirm that the contents of the PDF file Judgment are same word for word as per original Judgment.

Name of Steno	Rajesh A. Shimpi Stenographer Grade I
Name of Court	Shri. S.R. Navandar, Addl. Sessions Judge, Pune.
Date of Order	07.09.2021
Order signed by PO on	07.09.2021
Order uploaded on	08.09.2021