

(1998) 06 GAU CK 0040

In the Gauhati High Court

Case No : Criminal Orl. Petition No. 43 of 1998

Dhananjay Bhowmik

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 25-06-1998

Acts Referred:

Arms Act, 1959 — Section 25, 26, 27, 28
Constitution of India, 1950 — Article 173, 19, 84
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 439, 439A
Explosive Substances Act, 1908 — Section 3, 4, 5, 6
Penal Code, 1860 (IPC) — Section 120B, 121, 121A, 122, 123

Citation : (1998) CriLJ 4387 : (1998) 3 GLT 40

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : B.B. Deb and D. Guha, for the Appellant; B.R. Bhattacharjee, General, U.B. Saha, Government Advocate and A. Ghosh, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—This bail application has been filed u/s 439 of the Code of Criminal Procedure for releasing the accused Amulya Bhowmik who has been arrested on 16-3-98 in connection with Bishlgarh P. SECTIONC ase No. 101 of 1997 u/s 302, IPC. Since the arrest on 16-3-98 the accused has been incarcerated for about 103 nays by now. His bail application have been rejected by the learned Additional Sessions Judge, West Tripura, Agartala on 16-6-98 on the ground that mandatory period 180 days has not been lapsed in view of Criminal Procedure Code stands a mended by Tripura Amendment Act of 1998.

2. It is contended by Mr. B.B. Deb, learned Counsel for the petitioner that Tripura Amendment Act, 1997 is not applicable to the case of general nature. According to the learned Counsel, reading of aims and objects of that amended Act it extends only to the extremists related offence and as far as offence of the general nature is concerned, the Central Act would be applicable.

3. The substantial questions of law of public importance involved in this petition is that whether the Tripura Amendment Act is applicable only to the offences committed in connection with the insurgency related offence or it is applicable to the general offence of grave nature. To decide this issue we may refer to the provision of Section 167 (2)(a)(1) and the amendment of the Criminal Procedure Code amending Sections 167 and 439-A of the Code of Criminal Procedure as amended by the Code of Criminal Procedure (Tripura Fourth Amendment) Act, 1998 (hereinafter referred to as Amendment).

4. Section 167(2)(a) mandated that Magistrate shall not authorise detention of the accused persons in custody for a total period exceeding 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term for not less than ten years or sixty days, where the investigation relates to any other offence and on the expiry of the period of ninety days or sixty days as the case may be, the accused person shall be released on bail if he is prepared to and thus furnish bail. The aforesaid provisions has been amended by the Tripura Amendment Act of 1998. By the aforesaid amendment, Sub-section (2)(a) of Section 167 has been amended as follows :

(a) for the words "ninety days" wherever they occur, the words "one hundred eighty days" shall be substituted;

(b) for the words "sixty days" wherever they occur, the words "one hundred twenty days" shall be substituted.

5. Further Section 439 of the Code has been amended and a new Section 439-A has been inserted and it reads as:

Notwithstanding anything contained in this Code, no person-

(a) who being accused of or suspected of committing an offence under Sections 120B, 121, 121A, 122, 123, 124A, 153A, 302, 303, 304, 307, 326, 333, 364, 365, 366, 366A, 366B, 367, 368, 376, 386, 387, 392, 394, 395, 396, 397, 399, 412, 436, 449 and 450 of the Indian Penal Code, 1860 (No. 45 of 1860) and Sections 25, 26, 27 and 28 of the Arms Act, 1959 (54 of 1959) and Sections 3, 4, 5 and 6 of the Explosives Substances Act, 1908 (Act No. VI of 1908) is arrested or appears or is brought before a Court, or,

(b) who, having any reason to believe that he may be arrested on an accusation of committing an offence as specified in Clause(a) has applied to the High Court or Court of Session for a direction for his release on bail in the event of his arrest, shall be released on bail or, as the case may be, directed to be released on bail except on one or more of the following grounds namely-

(i) that the Court including the High Court or the Court of Session for reasons to be recorded in writing, is satisfied that there are reasonable grounds for believing that such person is not guilty of any offence specified in Clause (a)

(ii) that such person is under the age of sixteen years or a woman of a sick or infirm person;

(iii) that the Court including the High Court or the Court of Session, for reasons to be recorded in writing, is satisfied that there are exceptional and sufficient grounds to release or direct the release of the accused on bail.

6. It is contended by Mr. Deb that intention of the legislature to introduce the amendment is to contend the insurgency related offence or an offence committed in connection with the insurgency activities because many Sections of the IPC which are punishable for life have been excluded from the purview of the Amendment Act. In this connection he has referred to Sections 128, 130, 132, 238, 255, 304B, 313, 409, 467 and 489A of the IPC. Learned Counsel for the petitioner also referred statement of Objects and Reasons : It reads :-

The Code of Criminal Procedure (Tripura Third Amendment) Act, 1992 which was enforced on the 29th July, 1992 expired after first three years on 29th July, 1995. The validity of the Amendment was then extended for a period of two years by notification dated 5-8-95 and 5-8-96. The validity of Amendment has, therefore, expired on 28-7-97.

2. In the meanwhile, the extremist activities which necessitated the Code of Criminal Procedure (Tripura Third Amendment) Act, 1992 have again made their appearance and extremist outfits like ATTF and NLFT have become active and they have been declared unlawful. The State has experienced a number of incidents of ambushes, kidnapping with a view to extort ransom or to commit murder/grievous hurt, extortion and attack on peace-loving people murder, arson and looting, rape etc. and recent months have seen a spurt in such extremist activities. It has been noticed that in a number of such cases, the extremists who were earlier arrested by police and released by Courts on bail have again been involved. It is further noticed that in many cases these extremist elements have sanctuaries in Bangladesh to which they escape after committing crimes or when they are released on bail by the Courts. With a view to firmly and effectively deal with growing activities of dangerous anti-socials and extremist elements like ATTF and NLFT who have been indulging in such violent activities, the State Government has been feeling the necessity of making a suitable legislative measure on the lines of the Code of Criminal Procedure (Tripura Third Amendment) Act, 1992.

7. Relying heavily in the language used in the statement of objects and reasons it is contended by Mr. Deb that the Tripura Amendment Act confine only to insurgency related offence committed in connection with the insurgency activities and it is not applicable to offence of general nature although it is a grave offence. In this connection learned Counsel for the petitioner has referred to the decision of the Apex Court rendered in State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others, in which the Apex Court has held in paragraph-77 of its judgment that a statement of "Objects and Reasons" of the Act clearly brings

out of the object of the desirability of introducing an age of superannuation.

8. Learned Counsel also referred to the decision of the Apex Court rendered in *Virjiram Sutaria Vs. Nathalal Premji Bhavadia and Others*, wherein the Apex Court has held that the requirement of Article 173 of the Constitution was before securing a nomination a candidate must make a declaration that he is citizen of India and subscribes before a person duly authorised an oath or affirmation in the form set out and this requirement has been brought out in the statement of Objects and Reasons which has been brought by of Bill No. 1 of 1963 seeking amendment of Articles 19, 84 and 173 of the Constitution.

9. The aforesaid two decisions of the Apex Court has been further followed by the recent judgment of the Apex Court rendered in *S. Gopal Reddy Vs. State of Andhra Pradesh*, and the Apex Court has held that the interpretation of the statute should be construed in the context of the statement of objects and reasons seeking to achieve the Amendment/Act.

10. A reading of the decisions of the Apex Court as referred to above, it clearly appears that the intention of the legislature and the interpretation of the statute must be examined with the statement of objects and reasons. In other words, the intendment of the legislature is disclosed in the statement of Objects and Reasons. It is a common knowledge that amendment of the Act or passing of an Act is preceded by introduction of statement of Objects and Reasons. Reading of statement of Objects and Reasons necessitating the introduction or necessitating amendment of Section 439 and Section 167(2)(a) of the Code of Criminal Procedure by Tripura Amendment Act, it would clearly appear that the sole intention of the legislature is to contend the extremist out-fit like ATTF and NLFT and insurgency related offence committed in connection with the extremist activities. Because of these reasons, the Amendment Act itself purposely excluded various Sections of the IPC like 128, 130, 232, 238, 255, 304B, 313, 409, 467 and 489A from the purview of the Amendment Act, although the aforesaid sections are grave in nature.

11. This being the question of law, the learned Advocate General, Tripura has fairly submits that the intention of the legislature necessitating the amendment of the Act has been disclosed in the statement of Objects and Reasons and this Court would interpret the amendment in the context of statement of Objects and Reasons.

12. In view of the aforesaid discussion and reasons I am of the opinion that the amendment of Section 439 and Section 167 as amended by the Code of Criminal Procedure (Tripura 4th Amendment Act, 1998) is confined to the extremist related offence or an offence committed by the extremists. So far the other general cases of heinous crime committed in course of general nature are excluded from the purview of the Amendment Act. This would mean that offence not related to the extremist activities or not committed in course of extremist activities shall be governed by the Central Act.

13. In the instant case, the offence charged against the accused as u/s 302 IPC for committing alleged murder of general nature and it has no connection with the extremist activities or not committed in course of extremist activities. Therefore, it is purely outside the purview of the amended Act brought out by the Tripura 4th Amendment Act, 1998.

14. This leaves to be decided as to whether the accused would be entitled to go on bail under Sub-section (2)(a)(1) of Section 167 of the Code. The provision of Sub-section (2)(a)(1) of Section 167 is mandatory.

15. As already stated the accused was arrested on 16-3-98. By now he has been incarcerated for about 103 days and the investigation has not been completed and the charge-sheet has not been submitted as stated in the bar. If that is so, the accused shall be entitled to go on bail, if he prepared to furnish bail bond in view of mandatory provision of Section 167.

16. Under the circumstances, the accused Sri Amulya Bhowmik arrested on 16-3-98 in connection with Bishalgarh P. SECTION Case No. 101 of 1997 u/s 302 IPC shall be allowed to go on bail on his executing a bond of Rs. 10,000/- with one surety of the like amount to the satisfaction of the Chief Judicial Magistrate, West Tripura, Agartala.

17. Before parting with the files, I record my deep appreciation the manner in which the learned Advocate General assisted the Court in arriving at this conclusion by fairly conceding the submission of law and interpretation of the amendment of the Code, particularly, the interpretation of the statement of Objects and Reasons brought out by the Tripura Amendment Act of 1998.

18. This Registry is directed to circulate copy of this judgment to all the Sessions Judge in the State of Tripura.