

(1994) 03 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1764 of 1994

K. Balagopal

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 02-03-1994

Acts Referred:

Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 20A(1), 4(1)

Citation : (1994) 1 ALT 479 : (1994) CriLJ 1715

Hon'ble Judges : P. Ramakrishnam Raju, J; M.N. Rao, J

Bench : Division Bench

Advocate : P.A. Kamaleswari and Padma, for the Appellant; A.G., for the Respondent

Judgement

1. This writ petition is filed seeking for a writ of Habeas Corpus to discharge the accused (Detenus mentioned in the Annexure to the writ petition) u/s 4(1) of Terrorist and Disruptive Activities (Prevention) Act, 1987 hereinafter called "the TADA" for brevity, and consequently direct the designated Court, Kurnool to discharge the accused under the provisions of the TADA Act, and order transfer u/s 18 of the Act so as to enable the accused to apply for bail.

2. The General Secretary, Andhra Pradesh Civil Liberties Committee is the petitioner. 43 persons shown in the annexure, along with 14 persons were arrested in Crime No. 5/94 of II Town Police Station, Nandyal under Sections 147, 148, 506 read with 149, IPC and u/s 4(1) of TADA Act, 1987 and Section 7(1) of Criminal Amendment Act. As the First Information Report was filed u/s 4(1) of TADA Act, they have applied for bail before the Sessions Court, Kurnool which is the designated Court under TADA Act. The designated Court granted bail to accused Nos. 44 to 57 being women and they were released on bail. However, the Bail Application with regard to accused Nos. 1 to 43 was rejected by an order dated January 24, 1994. Hence, this writ petition is filed urging that Section 4(1) of TADA Act, is not applicable in the light of the allegations levelled against the accused.

3. On January 6, 1994 at about 7.00 p.m. when the Prime Minister of India was proceeding in a convoy to attend the public meeting at the Municipal High School grounds in Nandyal, a group of about 60 persons armed with sticks and stones led by P. Gokari and Ramaswamy crashed into the security convoy near Sanjeevnagar gate at Rajdoot Showroom between the advance pilot and the pilot cars, squatted on the road and blocked the road with an intention to force the Prime Minister and the Chief Minister of Andhra Pradesh to come out of their cars for receiving their representation. Sensing the imminent danger, the Officers accompanying the Prime Minister turned the convoy back and returned to the Guest House. The said group of persons who were in possession of pamphlets and other literature criticising the Prime Minister personally and on matters of the policy of his Government, would have caused harm to the Prime Minister and the Chief Minister, but for the timely intervention and decision taken to return to the Guest House. The Deputy Superintendent of Police, Home Guards, who was said to be the pilot officer of the Prime Minister's security convoy gave a report to the Inspector of Police, Nandyal II Town Police Station at 8.10 p.m. on the same day and FIR was registered for the offences mentioned above against the said persons. Section 4(1) of TADA Act is not attracted to this case, since no prior approval of the District Superintendent of Police was taken as contemplated under sub-section (1) of Section 20A of the Act.

4. The Superintendent of Police, Kurnool, as well as the Inspector of Police Nandyal II Town Police Station have filed separate counter-affidavits.

5. In the counter-affidavit filed by the Superintendent of Police (3rd respondent), it is stated that while he was at the public meeting venue at Municipal High School grounds in Nandyal looking after the security arrangements as the Prime Minister was expected to arrive at the meeting place from R and B Guest Houses around 7.15 p.m. he heard through wireless communication about the incident and he rushed to the spot and found that the Prime Minister's convoy had returned to the Guest House. At the Guest House, the Deputy Superintendent of Police (Home Guards), who was in Pilot Car explained to him the details of the incident. Then he asked him to lodge a complaint with the Inspector of Police, Nandyal II Town Police Station. As the Inspector of Police has also rushed to the Guest House in the meanwhile, he instructed the Inspector of Police to register a case u/s 4(1) of TADA Act, apart from other penal provisions having been personally satisfied about the applicability of the provisions of the Act. As he had to immediately rush out to clear the route between R and B Guest House and the Public meeting venue for taking the Prime Minister again to the public meeting venue, he could not issue written instructions to register the case and record his prior approval in writing.

6. The Inspector of Police, in his counter-affidavit stated that the First Information Report was registered only after obtaining necessary instructions from the Superintendent of Police, Kurnool as required u/s 20A of the TADA Act. The same is clearly recorded in the case Diary dated January 6, 1994. As the

Superintendent of Police himself was present and was personally aware of the incident and as he had orally instructed him to register the case u/s 4(1) of TADA Act, he could not take his instructions in writing, since the Superintendent of Police was busy supervising the bandhobust arrangements to ensure peaceful conduct of the meeting at the Municipal High School grounds.

7. Shri K. G. Kannabiran, the learned Senior Counsel appearing for the petitioner, has urged before us that the allegations in the First Information Report do not attract the application of Section 4 of TADA Act, and in any event in the absence of prior approval in writing of the Superintendent of Police, no information about the commission of an offence under this Act can be recorded.

8. Section 4 of the Act is extracted hereunder :

"(1) Whoever commits or conspires or attempts to commit or abets, advocates advises, or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(2) For the purposes of sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, -

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation - For the purposes of this sub-section, -

(a) "Cession" includes the admission of any claim of any foreign country to any part of India, and

(b) "Secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which -

(a) advocates, advises, suggests or incites; or

(b) Predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt,

the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

(4) whoever harbours or conceals, or attempts to harbour or conceal, any disruptionist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine".

Sub-section (2) of S. 4 of the Act has no application since no allegation is made that the accused have carried on any secession activity. For application of sub-section (3), the activity must be relatable to the killing or destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant. It is stated that the purpose for which the accused have gathered there and intercepted the convoy of the Prime Minister was only to submit a memorandum protesting about the Dunkel draft, as most of them appeared to be farmers. The weapons with which these persons are alleged to be armed with are sticks and stones with which killing or destruction of the VIPs cannot be definitely inferred, that too the presence of large security force attending the VIPs en route the meeting place.

9. Even assuming that the allegations levelled against the accused attracts the application of S. 4 of the TADA Act, still as rightly contended by the learned Senior Counsel for the petitioner, prior approval in writing as required by sub-section (1) of S. 20A of the TADA Act, is absent.

Section 20A of the Act reads as follows :-

"20A (1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No Court shall take cognizance of any offence under this Act without the previous sanction of the Inspector-General of Police, or as the case may be, the Commissioner of Police".

Before deciding the worthiness of accepting this contention, it is necessary to have a look at some of the decisions cited by the learned counsel for the petitioner.

10. In *Balbir Singh Vs. State of Haryana*, the Supreme Court observed that the authorities under the Act should not launch a prosecution which can be termed as cavalier as anyone convicted under S. 3(2)(i) of the Act, is liable to be punished with death, convicted under S. 3(2)(ii) of the Act is liable to be punished with imprisonment for a term which shall not be less than 5 years but which may extend to term of life and shall also be liable to fine; and convicted under S. 4 of the Act is liable to be punished with imprisonment for a term which shall not be less than 3 years but which may extend to term of life, and against any judgment or sentence rendered under the Act, an appeal would lie directly to the Supreme Court and not to the High Court; and so, having regard to all these features the investigation of cases under the Act has not only to be thorough but also of a high order.

11. In *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, , Justice Ahmadi, while dealing with a case under S. 3 of TADA Act, observed as follows (Paras 8 and 11) :-

"To put it differently the ratio of the decision is that the provisions of the Act need not be resorted to if the nature of the activities of the accused can be checked and controlled under the ordinary law of the land. It is only in those cases where the law enforcing machinery finds the ordinary law to be inadequate or not sufficiently effective for tackling the menace of terrorist and disruptive activities that resort should be had to the drastic provisions of the Act".

..... "It is clear from the statement extracted earlier that the intention of the accused persons was to eliminate the rivals and gain supremacy in the underworld so that they may be known as the bullies of the locality and would be dreaded as such. But it cannot be said that their intention was to strike terror in the people or a section of the people and thereby commit a terrorist act. It is clear that there was rivalry between the party of the accused on the one hand and Raju and Keshav on the other. The former desired to gain supremacy which necessitated the elimination of the latter. With that in view they launched an attack on Raju and Keshav, killed the former and injured the latter. Their intention was clearly to eliminate them and not to strike terror in the people or a section of the people. It would have been a different matter if to strike terror some innocent persons were killed. In that case the intention would be to strike terror and the killings would be to achieve that objective".

In the light of these pronouncements and having regard to the strict interpretation of the provisions of the TADA Act by the Supreme Court, we will proceed to examine the contentions raised by the learned Senior Counsel for the petitioner.

12. It may be mentioned that it is not disputed that in the First Information Report nothing was mentioned about obtaining prior approval of the District Superintendent of Police. According to the learned Senior Counsel for the petitioner, prior approval is a must to check the abuse of power and the Officer who is empowered to accord such an approval would have an occasion to go through the material and see whether the matter warrants approval for taking action under this Act. In other words, it ensures application of mind by the concerned authority before its seal of approval is appended. Lastly, according of approval would necessarily be preceded by reasons and the Court on judicial review would be in a position to adjudge the justiciability of those reasons. When this is the real intention of according approval, according to the learned Senior Counsel, it necessarily follows that prior approval should be in writing, as otherwise, these objects cannot be fulfilled.

13. Section 20A of the Act does not prevent the registration of a crime for other offences, but it ensures that action is taken under this Act with the prior approval of the District Superintendent of Police, who is fairly a high official in the

hierarchy of Police Officers being the head of the District Police Force. Therefore, on a fair interpretation of S. 20A, prior approval would necessarily mean the approval in writing, as it otherwise would not ensure application of mind by a higher Officer other than the Inspector of Police.

14. Section 20A of TADA Act, starts with a non abstante clause. Further it starts with a negative clause that no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police, thereby emphasis is laid that unless prior approval of the District Superintendent of Police is obtained, no offence can be recorded.

15. The observations of the Supreme Court in A.K. Roy and Another Vs. State of Punjab and Others, in similar circumstances are relevant (para 10).

"The use of the negative words in S. 20(1) "No prosecution for an offence under this Act shall be instituted except by or with the written consent of" plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well-known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th edn., p. 263 in his own terse language :

"If the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceedings".

Therefore, in view of the language employed under S. 20A of TADA Act, prior approval is a must. As already pointed out if there was a prior approval it would have been definitely mentioned in the FIR. No doubt, the Inspector of Police in his affidavit states that the Superintendent of Police himself was present and was personally aware of the incident and so he has rightly instructed him to register a case under S. 4(1) of TADA Act. But, in the counter-affidavit filed by the Superintendent of Police, it is not stated that he was present when the incident took place. On the other hand what he states is that on hearing the news through wireless communication, he immediately rushed to the spot and found that the convoy of the Prime Minister had returned to the Guest House. Be that as it may, the record does not disclose that prior approval was accorded.

By using the words "prior approval" it is clear that the statute requires that the prosecution can be launched subject to prior approval; in other words, unless there is prior approval, no prosecution can be set in motion. Therefore, it is the sine qua non or a condition precedent for launching prosecution. In the absence of prior approval or prior sanction, the whole prosecution will collapse or tumble.

16. This aspect can also be examined from another perspective. The First Information Report has to be necessarily filed in a Court of law in writing.

Therefore, to show that the mandatory provision of prior approval is complied with has necessarily to be shown in writing. It is all the more necessary to accord approval in writing since it is the application of mind on the material available on record and the reasons justifying such an accord are justiciable and open to judicial review by this Court. The degree of care, a statutory authority would exercise while according approval in writing is definitely far higher than what it would be if the approval were to be oral. Had the Superintendent of Police considered the question of giving written approval, it would have definitely occurred to him that the nature of the activities as alleged against the accused could be "checked and controlled under the ordinary law of the land" as observed by the Supreme Court in *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, . For the above reasons we agree with the learned Senior Counsel appearing for the petitioner that the words "prior approval" accruing in S. 20A of TADA Act, would necessarily mean "prior approval" in writing and in the absence of such an approval in writing, we have no hesitation to hold that the TADA Act cannot be invoked.

We accordingly, allow the writ petition and direct the designated Court, Kurnool to discharge the accused under the provisions of TADA Act and order transfer of the case under S. 18 of the TADA Act, to the regular Court having jurisdiction to try the case and it would be open to the accused to apply for bail.

16. Petition allowed.