

(2003) 04 AP CK 0091

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1410 of 2003

Katika Ramesh alias Madapuram Shankar

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167
Prevention of Terrorism Act, 2002 — Section 3(5), 4, 49, 49(7)

Citation : (2003) 1 ALD(Cri) 757 : (2003) 2 ALT(Cri) 6 : (2003) 2 APLJ 171 :
(2003) CriLJ 2880

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : Nandigam Krishna Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.C. Bhanu, J.—It is the case of the prosecution that on 8-7-2002 at about 4:00 a.m. near Yerriswamy Temple of Narasimhnapalli forest, Kanaganapalli Mandal, petitioner was found in possession of claymore mines. He made a confession that he belonged to CPI-ML Peoples War Group. Therefore, the Kanaganapalli police registered a case in Crime No. 31/2002 u/s 3(5) and 4(b) of the Prevention of Terrorism Act, 2002 (for short, "the Act") against the petitioner. Petitioner was arrested on the same day and produced before the learned Chief Judicial Magistrate-cum-Additional Sessions Judge, Ananthapur, who remanded him to judicial custody and since then he has been under detention. The present petition is filed for bail.

2. Learned counsel for the petitioner contended that since charge-sheet has not been filed within a period of 180 days, petitioner is entitled to bail as a matter of right, whereas the learned Additional Public Prosecutor opposing the bail petition contended that if the Public Prosecutor opposes the application of the accused to release on bail, the accused shall not be released on bail even after expiry of the

period of one year from the date of detention of the accused, and hence the petition should be dismissed.

3. For proper appreciation of the provisions of the Act with regard to bail, it is necessary to reproduce relevant portions of Section 49 of the Act.

"Section 49 -- Modified application of certain provisions of the Code :

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in Sub-section (2),--

(a) the references to "fifteen days," "ninety days" and "sixty days," wherever they occur, shall be construed as references to "thirty days," "ninety days" and "ninety days," respectively; and

(b) after the proviso, the following provisos shall be inserted, namely :--

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX"

(6) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard.

(7) Where the Public Prosecutor opposes the application of the accused to release on bail, no person accused of an offence punishable under this Act or any rule made thereunder shall be released on bail until the Court is satisfied that there are grounds for believing that he is not guilty of committing such offence.

Provided that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of Sub-section (6) of this Section shall apply."

4. From a perusal of the above Sections, since Section 167 of the Code of Criminal Procedure applies to a case involving an offence punishable under the Act with certain modifications, the following points can be deduced as regards the provisions governing bail for the offences under the Act.

(1) If charge-sheet is not filed within a period of ninety days from the date of detention of an accused, he shall be entitled to bail as a matter of right.

(2) But, if it is not possible to complete the investigation within the period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days on a report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused

beyond the said period of ninety days. Therefore, the right of the accused to be released on bail after ninety days if charge-sheet is not filed within that period is curtailed when the Special Court extends the detention beyond the period of ninety days as aforesaid. If charge-sheet is not filed within the period of even one hundred and eighty days, the accused shall be entitled to bail, as a matter of right.

(3) If charge-sheet is filed within the period of ninety days or one hundred eighty-days, as the case may be, when the Public Prosecutor opposes the bail application of the accused, no person accused of an offence punishable under the Act or any rule made thereunder shall be released on bail until the Court is satisfied that there are grounds for believing that the accused is not guilty of committing such offence.

(4) But, after the period of expiry of a period of one year from the date of detention of the accused for an offence under the Act, the provisions of Sections 437 and 439 of the Code of Criminal Procedure shall govern the bail application of the accused, subject, however, that the reference of "Court" occurring therein shall be construed as provided by the Act.

(5) Section 49(7) of the Act shall apply after charge-sheet is filed and Sub-section (2) of Section 49 of the Act shall apply before charge-sheet is filed.

(6) No person accused of an offence punishable under the Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard, notwithstanding anything contained in the Code of Criminal Procedure.

5. Admittedly, in the present case, charge-sheet has not yet been filed. The contention of the learned Additional Public Prosecutor that even after the expiry of a period of one year from the date of detention of the accused the remand of the accused can be extended in view of the proviso to Section 49(7) of the Act has no merit, because the proviso has no application to a case where charge-sheet has not been filed within ninety days, or as the case may be, one hundred eighty days. At this stage, there is no material to show that the Public Prosecutor has filed any report indicating the progress of the investigation of the case and the specific reasons for the detention of the petitioner beyond the period of ninety days from the date of his detention. Even assuming that there are specific reasons for detention of the petitioner beyond the period of ninety days, the period of detention can be extended up to one hundred and eighty days only, and since the petitioner has been in judicial custody from 8-7-2002, even the period of one hundred eighty days, as contemplated by Section 49(2) of the Act has already elapsed. Therefore, the petitioner is entitled to be released on bail as a matter of right.

6. In the result, petition is allowed. Petitioner shall be enlarged on bail on his executing a bond for Rs. 15,000/- (Rupees Fifteen Thousand only) with two sureties in a like such each to the satisfaction of the learned Chief Judicial

Magistrate-cum-Additional Sessions Judge, Ananthapur, subject to the condition that the petitioner shall report before the S.H.O., Kanaganapalli P.S., daily between 9:00 a.m. and 11:00 a.m., until further orders.