
(1993) 07 AHC CK 0033

In the Allahabad High Court

Case No : Criminal Miscellaneous Bail Application No. 8008 of 1993

Lakhvinder alias Lakha Singh and Anr

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-07-1993

Acts Referred:

Citation : (1993) 07 AHC CK 0033

Hon'ble Judges : G.S.N.Tripathi, J

Final Decision : Dismissed

Judgement

G. S. N. Tripathi, J.

1. This is an application for bail by Lakhvinder alias Lakha Singh and Nishan Singh alias Sona, who have been intetned in Case Crime No. 88 of 1991, under Section 216AS IPC and 3/4 Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) on the challan report submitted by P. S. Milak Khanam, District Rampur.

2. According to FIR lodged by Sri Laxmi Chandra Verma, S. O. at 0 30 a, m. on 14111991 at P. S. Milak Khanam, District Rampur, the police party surrounded the house of the petitioner in the night of 13/14111991. Some persons were talking inside the house and following words inter alia were uttered by them :

5. After hearing these words, the S. O. was satisfied that this was a gang of terrorists. After giving warning to them not to escape, the S. O tried to arrest these persons but four persons escaped. The accusedapplicants were arrested on the spot. They allegedly confessed their guilt before the police to the effect that the four escaped persons were Sikhs. They were terrorists and they used to visit their house quite often. On that date, they had been staying since 7 p. m. at their house. These petitioners had also made contributions towards the formation of Khalistan It was in this manner that the case was launched against them.

4. In this bail application, two points have been stressed before me : (1) This

Court has jurisdiction to hear this bail application and (2) Even if all the words used in the FIR (quoted supra) are believed to be true, no case under the provisions of TADA is made out. Hence this Court can dispose of this bail application.

5. I have heard the learned Counsel for the parties at considerable stretch and perused the record. I find that there is no force in this application and it deserves to be dismissed.

Point No. 1 :

6. My attention has been invited to a pronouncement of the Hon"ble Supreme Court in *Usmanbhai Dawoodbhai v. State of Gujarat*, 1988 Cr LJ Vol. I, page 938. This was also a case under the provisions of this Act. While discussing the legal provisions in paragraph 19, the Hon"ble Supreme Court observed as follows :

"Though there is no express provision excluding the applicability of Section 439 of the Code similar to the one contained in Section 20 (7) of the Act in relation to a case involving the arrest of any person on an accusation of having committed an offence punishable but that result must, by necessary implication, follow. It is true that the source of power of a Designated Court to grant bail is not Section 20 (8) of the Act as it only placed limitations on such power. This is made explicit by Section 20 (9) which enact that the limitations on granting of bail specified in Section 20 (8) are in addition to the limitations under the Code or any other law for the time being in force. But it does not necessarily follow that the power of a Designated Court to grant bail is reletable to Section 439 of the Code. It cannot be doubted that a Designated Court is "a Court other than the High Court or the Court of Session within the meaning of Section 437 of the Code. The exercise of the power to grant bail by a Designated Court is not only subject to the limitations contained therein, but is also subject to the limitations placed by Section 20(8) of the Act."

Again at page 948 in paragraph 22, the following observations were made by the Hon"ble Supreme Court:

"We must accordingly uphold the view expressed by the High Court that it had no jurisdiction to entertain an application for bail under Section 439 or under Section 482 of the Code."

7. In this view of the pronouncement made by the apex Court, this Court has no jurisdiction to entertain the application for bail under the provisions of TADA. The same situation arose before Gujarat High Court in *Suresh Ramtirath Yadav v. State of Gujarat*, 1990 (2) Cr LJ page 1834. The Hon"ble Judges held that even a writ petition under Article 226 of the Constitution alleging violation of Article 21 of the Constitution was not maintainable before the High Court.

8. Even otherwise the scheme of the Act as framed by the Parliament is that there are only two courts contemplated under the Act Designated Court

which is equivalent to a Court of Session and the Supreme Court. The appeal or revision against the order and judgment of the Designated Court lies directly before the Supreme Court (vide Sections 19 and 20(6) of the Act). So I find that this Court has no jurisdiction to entertain this application. Point No. 1 is decided accordingly.

Point No. 2.

9. Now we have to see whether a case under this Act TADA is prima fade made out. Section 4(1) defines disruptive activities in these words :

"(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....."

(Emphasis added)

The words that "we have to establish Khalisthan and for that we shall need men as well as material" clearly constitute conspiracy or abetment, advocacy or advice.

10. Again the presence of terrorists in the house of the petitioners amounts to "harbouring" terrorists, which is covered by Section 4(4) of the Act.

11. In Section 4 (2) the expression "disruptive activity" has been given an exhaustive meaning in subclauses (i) and (ii), which are as under : Disruptive activity means any action taken, whether by act or 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 support any claim, whether directly or indirectly, for the cession of any part of India or the cession of any part of India from the Union.

12. Khalistan as it has come to mean in popular parlance in or will be a sovereign state outside the Union of India, whoever intends to establish Khalistan certainly intends to disrupt the sovereignty and territorial integrity of India and any body who intends to bring about or supports any such claim whether directly or indirectly for the cession of any part of India necessarily commits disruptive activity.

13. The conspiracy as it was detected by the S. O. concerned from the words quoted above is prima facie established. At least we cannot say that

Again the presence of terrorists in the house of the petitioners o "harbouring" terrorists, which is covered by Section 4 (4) of the

even if the words as quoted above are taken as 100% true, no reasonable men can believe it that the persons, who had assembled there, were trying to disrupt or facilitate the disruption of the sovereignty or territorial integrity of India. In Explanation (2)(b) of Section 4 the word "Secession" has been defined as below :

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

As the fact that the State of Khalistan is sought to be established outside the Union of India and as the persons assembled at the house of the petitioners including the petitioners for this purpose, it clearly indicates that there was an assertion of a claim to determine as to whether some part of India will remain outside the Union of India. There cannot be two sovereign states in respect of the same territory. So prima facie, when it is alleged that the petitioners wanted to establish or help in establishing the State of Khalistan, it is prima facie evident that they wanted that some territory should be separated from the territory of Union of India. Hence it was clearly a pleading or advocacy on the part of the accused to disrupt the Union of India. It was a preaching and an act facilitating secession of a territory from the Union of India. This way prima facie these words quoted above constitute* disruptive activity and the case is covered by the Act No. 28 of 1987 of the Terrorist and Disruptive Activities (Prevention) Act.

14. The result is that this Court has no jurisdiction to entertain this application.

15. The application is accordingly dismissed. It is made clear that any observations made in the body of this order shall not be binding upon the "Designated Court" while trying the matter on merits. These observations shall be confined to the disposal of the bail application only.