
(2014) 02 SC CK 0068

In the Supreme Court Of India

Case No : Criminal Appeal No. 357 of 2014 (Arising out of Special Leave to Appeal (Criminal) No. 7898 of 2013) and Criminal Appeal No. 358 of 2014 (Arising out of Special Leave Petition (Criminal) No. 7913 of 2013)

Lingaram Kodopi

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Chhattisgarh Jansuraksha Adhiniyam Act — Section 8(1), 8(2), 8(3)
Penal Code, 1860 (IPC) — Section 120B, 121, 124(1)
Unlawful Activities (Prevention) Act, 1967 — Section 10, 13

Citation : (2014) 2 ACR 1369 : (2014) 4 AD (SC) 14 : (2014) 1 ALD(Cri) 1023 : (2014) 84 ALLCC 993 : (2014) 2 CGLJ 67 : (2014) 1 Crimes 209 : (2014) 1 RCR(Criminal) 979 : (2014) 2 SCALE 122 : (2014) 3 SCC 474 : (2014) 6 SCJ 701 : (2014) 1 UC 608

Hon'ble Judges : Surinder Singh Nijjar, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Colin Gonsalves, Prashant Bhushan, Ramesh K. Mishra, Govid Jee, Aniy Shukla and Jyoti Mendiratta, for the Appellant; V.A. Mohta and Aniruddha P. Mayee, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—Leave granted.

2. Both these appeals arise out of common order dated 8.7.2013 passed by the High Court of Chhattisgarh, whereby applications for bail preferred by these two Appellants were rejected.

3. Appellants are related to each other. The Appellant Lingaram Kodopi is the nephew of the Appellant Soni Sori (Lingaram's father and Soni Sori's husband were the real brothers). Both these Appellants have been implicated under Sections 121, 124(1) and 120B of the Indian Penal Code as well as Section 8(1) (2)(3) of the Chhattisgarh Jansuraksha Adhiniyam and Sections 10 & 13 of the

Unlawful Activities of the Act. For the alleged offence under the aforesaid provisions crime No. 26/2011 with Police Station Kuakonda district Dantewada, Chhattisgarh is registered against them alongwith certain other persons. Both have been arrested in connection with the aforesaid case.

4. In nut-shell the prosecution case is that on 8.9.2011, the concerned police received secret information that these Appellants are likely to work as conduit for paying huge amount to the Naxalties, which was to be paid by Essar Company through co-accused B.K. Lala, a contractor of the said company, whose plant was operating in the naxal affected areas. The concerned police conducted a raid when these two Appellants were in the process of receiving the amount of Rs. 15 lakhs from B.K. Lala at village Palnar weekly market at 1.00 p.m. on 9.9.2011. When the police party reached, a pandemonium took place and taking advantage thereof Soni Sori successfully escaped. However, Lingaram Kodopi and co-accused B.K. Lala were arrested from the spot. The Appellant Soni Sori was also arrested afterwards on 12.10.2011 in Delhi.

5. As per the prosecution, in the present case different aspects of naxal movements had appeared wherein these naxalites receiving huge amount of money from Corporate groups to further their activities of waging war against the country. Shri B.K. Lala, Accused No. 1 in this case is a contractor of Essar Company who was supposed to pay money to these naxalites. Both the Appellants were made conduits to receive money from B.K. Lala so that they could hand it over to the concerned naxalite persons. Apart from B.K. Lala and the two Appellants, one DVCS Verma who is the General Manager of Essar Company has also been implicated in the said case.

6. These two other accused persons, viz. Shri B.K. Lala as well as Shri DVCS Verma were also arrested. However, both have since been enlarged on bail, Shri B.K. Lala who was arrested on 9.9.2011 was granted statutory bail on 4.2.2012, on the ground that charge-sheet was not filed until after 90 days from the date of registration of FIR. Shri DVCS Verma was granted bail on 3.1.2012. These two Appellants however were denied bail by the Trial Court and, as mentioned above, even the High Court has rejected their bail applications. From the perusal of the order of the High Court it becomes clear that the High Court has mainly been influenced by the serious nature of crime allegedly committed by these Appellants. The High Court also took note of the statements of certain witnesses which were recorded during investigation and went through the case diary. As per the High Court since direct evidence was available against these accused persons showing their complicity, there was a prima facie evidence against the Appellants to the effect that they were found to be working as conduit between Essar Company through B.K. Lala and the naxalites.

7. In support of plea for bail on behalf of Soni Sori, Mr. Colin Gonsalves, learned senior Counsel made detailed submissions, with lot of emphasis that the Appellants were falsely implicated in this case because of previous animosity with the police authorities, of which they had become the victims over a period of

time without any fault of theirs. It was argued that though the Appellants were accused of collecting money for naxalites, in the entire charge-sheet and the evidence collected, there was no material which could show any link of these Appellants with the naxalites. Mr. Gonsalves referred to the details of the case which was foisted against him by the police on previous occasions and in all these cases she was acquitted by the courts. According to him, the Appellant Soni Sori had shown courage in filing Writ Petition (Crl.) No. 206 of 2011 in the High Court of Chhattisgarh which had become the cause of anguish for Chhattisgarh police. In that Writ Petition she stated that she was tribal woman from Village Sameli in Dantewada district of Chhattisgarh. Her nephew Mr. Lingaram Kodopi on 31.8.2009 was kidnapped by the Chhattisgarh police and forced to become a Special Police Officer (SPO). She, therefore, through the brother of Lingaram, organized and filed a Writ Petition (habeas corpus) No. 5469 of 2009 before the Chhattisgarh High Court as a result of which Mr. Lingaram was released from custody. He thereafter became a journalist and participated in several TV programmes on the massacres and killings taking place in Chhattisgarh and he also took photographs of the houses of the tribals that were burnt by the Chhattisgarh police and these photographs were printed in magazines. As a consequence she incurred the wrath of police who started filing series of false cases against the Appellant Soni Sori. Details of these cases are given in Para 8 of the 'Synopsis' to the Special Leave Petition.

8. Mr. Gonsalves further submitted that in September, 2011, Tehelka Magazine did a sting operation of the conversation which took place between the Appellant and constable Mankar of the Kirandul police station, in which constable Mankar admitted in a phone conversation that the Appellant, Soni Sori and her nephew Lingaram Kodopi were being framed in the Essar case, and that Lingaram Kodopi was picked up from the house and not from the bazaar. The Appellants have filed the copy of the CD with transcription and excerpts of the conversation are reproduced in the SLP paper book as well. On that basis his submission was that this sting operation was enough to show that the Appellants were framed falsely in the entire case.

9. To buttress this submission of false implication, Mr. Gonsalves also pointed out that the Appellant Soni Sori who was a teacher in a Government School had in fact been attending the school which was clear from the attendance register filed as Annexure P-1 to the SLP. Mr. Gonsalves also highlighted the atrocity committed on her by the police during her custody, particularly on 8.10.2011. He also submitted that because of the torture she suffered at the hands of police during interrogation on that day, her health deteriorated and she had to be admitted into the Dantewada district hospital at 9.30 a.m. on 10.10.2011. When she was taken to the Court on that day at 1.45 p.m. she was not even in a position to stand and walk. The police informed the Magistrate by falsely stating that she had suffered a fall in the bathroom. From the court she was taken to Jagdalpur Jail from where she was taken to Maharani hospital from Jagdalpur and admitted there at 8.00 p.m. On 12.10.2011 she was referred to Bhim Rao

Ambedkar Medical College, Raipur.

10. Mr. Gonsalves also referred to the proceedings in Writ Petition (Crl.) No. 206 of 2011 pending in this Court wherein the aforesaid worsening health condition of Soni Sori was explained and on 20.10.2011 this Court directed that she be taken to Kolkata and admitted in Nil Ratan Sarkar Medical College and Hospital, Kolkata. The Court also observed, while giving this direction, that the injuries sustained by her do not prima facie appear to be simple as had been projected by the Chhattisgarh Police. After the examination of Soni Sori by the aforesaid hospital in Kolkata and receiving the report from the said hospital, on 2.5.2012 this Court directed the Director of All India Institute of Medical Sciences (AIIMS) to constitute a Board of Directors, which would include the Head of the Department of Gynaecology, Endocrinology and the Cardiac Department, to examine Ms. Soni Sori, as to her physical condition and, thereafter, to recommend the treatment to be undergone in AIIMS itself. At AIIMS she was treated for "vulval excoriations and scabies" and thereafter transferred to Raipur Central Prison and then to Jagdalpur Central Prison.

11. Mr. Gonsalves also argued that even other family members of Soni Sori have been tortured by the police. According to him, when Soni Sori was in custody her husband Anil Futane was arrested in July, 2010 and he suffered a paralytic stroke while in custody as a result of torture. There are in all four cases in which he was charged for maoist. His last acquittal order came on 1.5.2013 and thereafter he died in mysterious circumstances on 1.8.2013. He thus, submitted that after the death of her husband there was nobody in the family to look after her children whose condition had become miserable in the absence of any adult person to take care of them.

12. Mr. Prashant Bhushan, learned Counsel appearing for Lingaram Kodopi, in addition, highlighted the circumstances under which his client became the target of Chhattisgarh Police which had forced him to become a Special Police Officer (SPO). This was the reason for Soni Sori to file Writ Petition (Crl.) 206 of 2011. Mr. Bhushan also sought to narrate in detail the same kind of witch hunting, resorted to by the police qua Lingaram, filing series of false cases against him as well and he was acquitted in all these cases.

13. Mr. V.A. Mohta, learned senior Counsel appearing for the State submitted that by well reasoned order, the High Court had rejected the bail application of the Appellants herein. He further submitted that as per the prosecution cases, on previous date confidential information was received from the IB that the Appellants are going to receive money from B.K. Lala on 10.9.2011. B.K. Lala as well as Lingaram were nabbed on the spot whereas Soni Sori escaped. He also submitted that the main reason for acquittal of these Appellants in other cases was that the witnesses do not come to Court for deposition as they fear threat to their own life. Though he did not deny that the bail was already granted to B.K. Lala and DVCS Verma, he however, submitted that if because of not handling the cases properly they were granted bail, same benefit should not be extended to

the Appellants.

14. Since in the present appeals, we are only concerned with the issue of grant of bail to the Appellants pending trial, it may not be necessary to deal with the arguments of the Counsel for the parties on either side, in detail, for obvious reasons. We would like to refer to the orders dated 12.11.2013 passed for these proceedings whereby interim bail was granted to both the Appellants. Relevant portions of the said order reads as follows:

It has been stated by the learned Counsel for the Petitioners that the Petitioner-Lingaram Kodopi-in SLP (Criminal) No. 7898 of 2013 has been in custody since 9th September, 2011 and the Petitioner-Soni Sori in SLP (Criminal) No. 7913 of 2013 has been in custody since 4th October, 2011. Since it is going to take some time before a responsible officer can be present in Court in assisting the examination of the record, we are of the opinion that it would be unjust to continue the incarceration of the Petitioners during the pendency of the applications for bail. We are also mindful of the fact that Soni Sori, Petitioner in SLP (Criminal) No. 7913 of 2013 has been acquitted in five earlier cases. Similarly, Petitioner Lingaram Kodopi in SLP (Criminal) No. 7898 of 2013 was also acquitted in the earlier matter. It has also been stated that B.K. Lala, co-accused has also been granted bail on 4th February, 2012. In these circumstances, we are of the opinion that it would be appropriate to direct that the Petitioners be released on interim bail during the pendency of the bail applications. However, keeping in view the submissions made by Mr. V.A. Mohta, learned senior Counsel appearing for the State of Chhattisgarh, it would be in the interests of justice to direct that the Petitioners shall not enter the State of Chhattisgarh during the period in which they are granted interim bail. It is ordered accordingly.

At this stage, it has been brought to out notice by Mr. Colin Gonsalves, learned senior Counsel appearing for the Petitioner in SLP (Criminal) No. 7913 of 2013 and Mr. Prashant Bhushan, learned Counsel appearing for the Petitioner in SLP (Criminal) No. 7898 of 2013 that the Petitioners have not met their families for a long time and it would be only humane if they are permitted to meet their families before they travel to Delhi.

In view of the above, we direct the concerned Senior Superintendent of Police to depute some responsible police officers to escort the Petitioners to their respective villages so that they can meet their families for a period of 24 hours. On the following day, the Petitioners shall be escorted to Delhi. They shall be permitted to reside in any locality of their choice in Delhi. Once the Petitioners reach Delhi, they are directed to report to the in-charge of the local Police Station once a week. They shall report to the in-charge of the local Police Station every Sunday at 11.00 a.m.

15. On the basis of the aforesaid orders, both the Appellants are on bail with the condition that they would not enter the State of Chhattisgarh during this period. Other two accused persons have already been granted bail. Charges are yet to

be framed. Soni Sori is having medical problems as well. There are certain circumstances, pleaded by the Appellants, and if ultimately established, there may be a possibility of proving the innocence of the Appellants. Soni Sori has lost her husband and has to look after her children who are of tender ages. Lingaram Kodopi, who is a young man of 24 years, claims to be genuinely attempting to establish himself as a good citizen in the society. Taking into consideration all these circumstances cumulatively and going by the past history, as demonstrated by both the Counsel for the Appellants, we are of the opinion that the Appellants deserve to be enlarged on bail during the pendency of trial on furnishing personal securities in the sum of Rs. 50,000/- with two sureties each of the like amount, to the satisfaction of the Trial Court.

16. At the same time, we agree with Mr. Mohta that there should be some stringent conditions for grant of bail to the Appellants. Accordingly, we order that it would be subject to the condition that the Appellants shall report to the concerned police station once a week i.e. at 10.30 a.m. on every Monday to show their presence. They would be permitted to take along their lawyer. Further, they shall appear before the Trial Court on each and every date of hearing and shall not seek exemption except when on a particular date they are unable to appear because of the reasons beyond their control, like illness etc. They shall also inform the Court about their place of stay/residence and disclose to the Court as to when there is a change of residence. Further, they shall not leave the station or travel abroad without the prior permission of the trial court.

17. These appeals are disposed of in the aforesaid terms.