

(2017) 06 AP CK 0015
In the Andhra Pradesh High Court
Case No : 195 of 2017

Muzaffar Hussain Rizwan @ Rizwan @ Abulhasan and another	APPELLANT
Vs	
The State of Telangana	RESPONDENT

Date of Decision : 08-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 173](#), [Section 164](#) - Report of police officer on completion of Investigation - Recording of confessions and statements
[Indian Penal](#)

Citation : (2017) 06 AP CK 0015

Hon'ble Judges : C.V.Nagarjuna Reddy, J.Uma Devi

Bench : DIVISON BENCH

Advocate : M.A.Mujeeb, P.Vishnuvardhan Reddy

Judgement

1. These two Criminal Appeals arise out of Orders passed by the IV Additional Metropolitan Sessions Judge, Nampally, Hyderabad, dismissing the bail applications of the appellants.
2. Criminal Appeal No.422 of 2017 is filed against Orders, dated 21-03-2017 and 31-03-2017, in CrI.M.P.Nos.410 and 464 of 2017 respectively in Special Sessions Case No.1 of 2017 in RC.No.1 of 2016, whereby the applications for bail filed by accused Nos.2, 4 & 9 and accused Nos.1 and 3 respectively were dismissed.
3. Criminal Appeal No.195 of 2017 is filed against Order, dated 28-11-2016, in CrI.M.P.No.1263 of 2016 by accused Nos.5 and 7 in the aforesaid Special Sessions Case whereby their application seeking grant of bail was dismissed.
4. Before proceeding further, it requires to be mentioned that when these Criminal Appeals came up for hearing before this Court on earlier occasion, Mr.M.A.Mujeeb, learned Counsel for the appellants in both the cases, has reported that accused No.1, who is appellant No.1 in CrI.A.No.422 of 2017, does not intend to pursue the Criminal Appeal to the extent of himself as he intends to move a separate Application for bail before the trial Court. In view of the same,

the Criminal Appeal was dismissed qua appellant No.1/accused No.1 by Order, dated 01-06-2017.

5. The National Investigating Agency (NIA) has arrested the accused in Special Sessions Case No.1 of 2017 on receiving credible information that all of them and their accomplice have assembled at the residence of accused No.2 and entered into a criminal conspiracy in order to wage war against the Government of India by collecting weapons and explosive materials to target prominent persons, public places, religious places, malls, markets, public properties and, in particular, sensitive Government buildings in Hyderabad and other places. An FIR was registered vide RC No.01/2016/NIA/HYD by the NIA under Sections 121- A and 122 of the Indian Penal Code, 1860 (IPC), Sections 4 and 5 of the Explosive Substances Act, 1908 and Sections 18, 18-B, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967, on 22.06.2016.

6. The NIA has filed remand report of the appellants in Crl.A.No.422 of 2017, who were arraigned as accused Nos.1 to 4 and 9 in the Court of the IV Additional Metropolitan Sessions Judge and Special Court for NIA Cases, Hyderabad (for short the lower Court), on 30-06-2016. As regards the appellants in Crl.A.No.195 of 2017, who were arraigned as accused Nos.5 and 7, the petition for police custody was filed by the NIA on 12.07.2016 before the trial Court and appropriate orders appear to have been passed by the lower Court granting police custody of the said accused.

7. A common chargesheet was filed under Section 173 (2) (i) of the Code of Criminal Procedure, 1973 (for short the Code), by the NIA and the same was dispatched to the Court on 22-12-2016.

8. The appellants/accused Nos.1 to 5, 7 and 9 were charged for various offences under different Sections, which include Sections 17, 18, 18-B, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967, Sections 4 and 5 of the Explosive Substances Act, 1908, and Section 25 (1A) of the Arms Act r/w Section 120 B and 34 IPC.

9. Though the appellants in both these Criminal Appeals have filed separate bail applications, which were dismissed by separate orders, the reasons for dismissal of these applications were almost identical. In fact, the trial Court has dismissed these Applications considering the allegations that the appellants were involved in criminal conspiracy; that they hatched a plan with the other accused to blast the Government buildings by using explosive materials; that they were alleged to have connections with the prohibited terrorist organization called Islamic State of Iraq and Syria (ISIS); and that their activities fall under the Unlawful Activities (Prevention) Act, 1967. The trial Court further reasoned that as the activities alleged against the appellants were grave in nature, they are not entitled to be released on bail.

10. At the hearing, Mr.M.A.Mujeeb, learned Counsel for the appellants advanced the following contentions: 1. Though accused No.8 was also chargesheeted along

with the appellants in both these Appeals, for the reasons best known to the NIA, he was not arrested and that therefore, the appellants have been meted out discriminatory treatment;

2. Except in case of appellant No.1, who had withdrawn this Criminal Appeal, no incriminating material other than mobile phones, sim cards and memory cards was recovered from other appellants, prima facie proving that they are involved in terrorist or antinational activities and that therefore, their arrest and detention is ex facie illegal; and

3. None of the appellants have previous criminal record and considering the fact that as many as 170 witnesses have been cited by the NIA, the trial of the case is likely to take a minimum period of three years and that it would be highly unjust to deny personal liberty to the appellants for such a long period, more so, in the absence of incriminating material against them.

11. Opposing the above submissions, Mr.P.Vishnuvardhan Reddy, learned Special Public Prosecutor for the NIA, submitted that initially, a detailed remand report in case of the appellants in Crl.A.No.195 of 2017 was filed and that after thorough investigation, the NIA has filed chargesheet, on 22.12.2016, specifically charging all the appellants and accused Nos.6 and 8 for various serious offences involving national security. He has further submitted that during the investigation, the NIA has unearthed strong incriminating material such as telephonic conversation, CDS and other electronic records proving involvement of all the appellants in the proposed offences, which was fortunately busted by the NIA, thereby, saving the lives of innocent citizens of the country.

12. As regards the submission of the learned Counsel for the appellants that the NIA has extended differential treatment to accused No.8, the learned Special Public Prosecutor submitted that though accused No.8 was also a part of criminal conspiracy, he has so far co-operated with the NIA by making a statement under Section 164 Cr.P.C.; that his non-arrest cannot be made a basis for release of the appellants; and that however, an informed decision will be taken by the NIA regarding accused No.8 in due course of time.

13. In reply to the above submissions of the learned Special Public Prosecutor, the learned Counsel for the appellants argued that the most serious offences viz., Section 121 A and 122 IPC, which pertain to conspiracy to commit offences punishable under Section 121 thereof and Collecting arms, etc., with the intention of waging war against the Government of India, were deleted from the chargesheet and that therefore, the respondents cannot raise the plea of threat to national security with a view to justify the incarceration of the appellants.

14. We have given our earnest consideration to the respective submissions of the learned Counsel for the parties with reference to the record.

15. Since the criminal trial is yet to take place, we refrain from rendering any findings touching the merits of the case as that is likely to prejudice the interests

of the appellants. The fact, however, remains that a detailed chargesheet has been filed by the NIA making serious imputations against the appellants for offences such as raising funds for terrorist acts, conspiracy, recruiting of person or persons for terrorist acts, being members of terrorist gang or organization, acts constituting the offence relating to support given to the terrorist organization etc., besides the offences under the Explosive Substances Act, 1908, and Arms Act, 1959.

16. Though it is a fact that the NIA has deleted the graver offences such as Sections 121 A and 122 IPC from the chargesheet, the offences for which the appellants have been charged can, by no means, be termed as non-serious offences. On the contrary, as noted above, these offences pertain to the acts of terrorism, which threaten the integrity of the Nation and safety of the citizens.

17. Section 43D of the Unlawful Activities (Prevention) Act, 1967, adopted certain provisions of the Code with modification. Sub-Section 5 thereof bars release of a person accused of the offences punishable under Chapters IV and VI thereof, if in custody, on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release. The proviso to the said Sub-Section bars release of such accused on bail on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code, is of the opinion that there are reasonable grounds for believing that the accusation made against such person is prima facie true.

18. Dealing with the issue of grant of bail to a person accused of committing offences involving threat to security of the State, the Apex Court in *Afzal Khan @ Babu Murthuzakhan Pathan v. State of Gujarat* held that ordinarily, a bail application, in a case of such nature involving the security of the State, should be rejected.

19. In *Peoples Union for Civil Liberties and another vs. Union of India*, the Apex court has shown its extreme concern at the acts of terrorism and the debilitating effect it has on the Nation and its citizens. We feel it apt to reproduce the relevant portion of the said decision hereunder: "4... Terrorism has become the most worrying feature of contemporary life. Though violent behaviour is not new, the present-day terrorism in its full incarnation has obtained a different character and poses extraordinary challenges to the civilised world. The basic edifices of a modern State, like democracy, State security, rule of law, sovereignty and integrity, basic human rights etc. are under the attack of terrorism.

8. These terrorist strikes have certain common features. They could be very broadly grouped into three:

Attack on the institution of democracy, which is the very basis of our country (by attacking Parliament, Legislative Assembly etc.). And the attack on economic system by targeting economic nerve centres.

Attack on symbols of national pride and on security/strategic installations

(e.g.Red Fort, military installations and camps, radio stations etc.)

Attack on civilians to generate terror and fear psychosis among the general populace. The attack at worshipping places to injure sentiments and to whip communal passions. These are designated to position the people against the Government by creating a feeling of insecurity."

20. No doubt, the personal liberty of an individual citizen needs to be respected and zealously protected by the Courts in general and by the Constitutional Courts in particular. When the Courts are faced with the competing interests of personal liberty of an individual on one side and the national interest and the safety of the citizens on the other side, the Courts must always lean towards protecting the latter. While this Court is not prepared to draw any conclusion on the guilt or otherwise of the appellants at this stage, the remand report and the chargesheet filed by the NIA clearly show the existence of a prima facie case of involvement of the appellants in the commission of the alleged offences. This is being so, under the proviso to Section 43 D (5) of the Unlawful Activities (Prevention) Act, 1967, grant of bail to the appellants is barred.

21. As regards the submission of the learned Counsel for the appellants that accused No.8 has not been arrested, we do not perceive this as a ground to release the appellants on bail. So long as there is a prima facie case against them, they cannot plead discrimination. We do not intend to question the wisdom of the NIA in not arresting accused No.8 despite his statement under Section 164 Cr.P.C. on commission of offences by all the accused including himself. It is for them to assess the situation and take appropriate action against accused No.8. The appellants cannot claim relief based on negative equality.

22. In the light of the above discussion, we do not find any ground to release the appellants on bail. Both the Criminal Appeals are, accordingly, dismissed.