

(2009) 03 SC CK 0217

In the Supreme Court Of India

Case No : Criminal M.P. No's. 4087, 5229, 5230, 5237 and 5314 of 2009 in
Criminal Appeal No. 1060 of 2007

Sanjay Dutt

APPELLANT

Vs

State of Maharashtra Tr. CBI, Bombay

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Arms Act, 1959 — Section 25(1A), 25(1B), 3, 3(3), 5
Criminal Procedure Code, 1973 (CrPC) — Section 389
Representation of the People Act, 1951 — Section 8(3), 8(4)
Terrorist and Disruptive Activities (Preventio

Citation : (2009) 57 BLJR 1608 : (2009) 111 BOMLR 2116 : (2009) CriLJ 2785 :
(2009) 3 GLR 1833 : (2009) 4 JT 614 : (2009) 1 LW(Cri) 503 : (2009) 43 OCR
104 : (2009) 2 PLJR 221 : (2009) 4 SCALE 369 : (2009) 5 SCC 787 : (2009) 5
SCR 188 : (2009) 4 UJ 2036

Hon'ble Judges : K. G. Balakrishnan, C.J.;R. M. Lodha, J;P. Sathasivam, J

Bench : Full Bench

Advocate : Gopal Subramaniam, A.S.G., Harish N. Salve, Mukul Rohtagi, Soli J. Sorabjee, K.T.S. Tulsi, Ranjit Kumar and Kanak Raj, Mukul Rohtagi, Ankur Chawla, Gaurav Bhatia, Minakshi, Hari Shankar K. Harshvardhan Jha, Vikas Singh, Ashish Jha, Alok Saran, R.S. Massy Verma, for T.N. Rao, Manoj Saxena, Rahul Shukla, Sunil Fernandes, P.V. Yogeswaran, Rajat Jariwal, Prashant Bhushan, Rohit Kumar Singh, Karan Singh, Hari Shankar K. Vikas Singh Jongra, Satya Kam and Raghenth Basant, for B.K. Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, C.J.—The petitioner herein, the 117th accused in Special Case No. 1/93 (Bombay Blast Case) before the Special Judge, TADA (Mumbai), was charged under various Sections of Terrorist and Disruptive Activities (Prevention) Act (TADA) such as Section 3(3), Section 5 and Section 6 and also for the offence u/s 3 and Section 7 read with Sections 25(1A) and 25(1B) of the Arms Act, 1959. The petitioner was found guilty of offences punishable u/s 3 and Section 7 read with Sections 25(1A) and 25(1B) of the Arms Act and was

sentenced to six years rigorous imprisonment. The petitioner has filed appeal against his conviction and sentence and that appeal is pending consideration before this Court. Pending consideration of that appeal, the petitioner was granted bail on 28.2.2007.

2. Crl, M.P. No. 4087 of 2009 has been filed by the petitioner u/s 389 of the Code of Criminal Procedure, 1973 (Cr.P.C.) praying that execution of the order of conviction and sentence be suspended pending final hearing of the appeal. In the petition it is stated that he belongs to a family which has been in long public service in the country and the petitioner is now desirous of contesting election to the House of People from Lucknow Parliament Constituency and in view of Section 8(3) of the Representation of People Act, 1951, he has incurred disqualification from contesting the election for becoming a member of either House of Parliament. Therefore, it is prayed that the conviction and sentence of the petitioner be suspended to enable him to contest the election.

3. We have heard Shri Harish N. Salve, learned senior counsel, appearing for the petitioner and Shri Gopal Subramaniam, learned Additional Solicitor General of India, appearing for the Central Bureau of Investigation (CBI) opposing the petition. Some third parties have also filed intervention applications. These parties were given opportunity to address their arguments even though we have not allowed any of these intervention applications as it is a Criminal Miscellaneous Petition.

4. The learned Counsel appearing for the petitioner drew our attention to the extracts of the judgment passed by the learned Special Judge and elaborately argued that the petitioner was not part of the criminal conspiracy charged against him. He has been acquitted by the Special Judge for the offence under Sections 3 and 5 of the TADA and no appeal has been filed against that by the State and the conviction is only under Sections 3 and 7 read with Sections 25(1A) and 25(1B) of the Arms Act. It was argued that the conviction itself for the above offences are based on alleged confession made by the petitioner which was not strictly admissible under the law. It was also contended that the alleged possession of the weapon by the petitioner was much prior to the criminal conspiracy allegedly hatched by other accused. The learned Counsel for the petitioner also drew our attention to the fact that though u/s 12 of the TADA the Designated Court, when trying any offence, was competent to try any other offence with which the accused may, under Cr.P.C., be charged at the same trial if the offence is connected with such other offence. It was argued that the finding of the Designated Court would show that offence, if any, allegedly found against the petitioner was not even connected with other offences for which other accused were charged and, in that event, Section 15 of the TADA itself would not be attracted and the confession allegedly made by the petitioner to the police officer was not admissible. The learned Counsel further argued that some of the observations made by the Constitution Bench of this Court in *Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat*, , require slight clarification. The learned

Counsel further pointed out that the petitioner has got fair chance of appeal filed by him being allowed and, if the conviction and sentence is not suspended, he would be seriously prejudiced. He placed reliance on the decisions of this Court in *Navjot Singh Sidhu Vs. State of Punjab and Another*, , and *Rama Narang Vs. Ramesh Narang and Others*, .

5. The learned Additional Solicitor General appearing for the CBI contended that the conviction and sentence could be suspended only in exceptional circumstances and the petitioner in this case is not entitled to any such relief in view of the serious crime allegedly committed by him. It was argued that u/s 8(3) of the Representation of People Act, 1951, any person who has been convicted of any offence and sentenced to imprisonment for not less than two years, except any offence referred to in Sub-section (1) or Sub-section (2), shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. Therefore, it is argued, when there is an express prohibition of law from contesting the election, the relief prayed for by the petitioner may not be accepted in the facts and circumstances of the present case.

6. We have carefully considered the contentions advanced by the petitioner. The petitioner has been convicted for serious offences. Of course, his conviction and sentence have been challenged before this Court in an appeal. Though our attention was drawn to the various findings recorded by the Special Judge and also the nature of evidence adduced by the prosecution, we do not propose to consider these facts at this stage as it may seriously prejudice either of the parties when the appeal filed by the petitioner is considered by this Court. The petitioner is a well-known cine artist and because of his contribution to art and cinema he has got large number of fans throughout the country and abroad. His father was also a well-known film actor and he was deeply involved in politics. At one point of time, petitioner's father was Minister in the Union Cabinet. The petitioner is not a habitual criminal nor it has been brought to our notice that he had involved in any other criminal case. Despite all these favourable circumstances, we do not think that this is a fit case where conviction and sentence could be suspended so that the bar u/s 8(3) of the Representation of People Act, 1951 will not operate against the petitioner. Law prohibits any person who has been convicted of any offence and sentenced to imprisonment for not less than two years from contesting the election and such person shall be disqualified for a further period of six years since his release. In the face of such a provision, the power of the Court u/s 389 Cr.P.C. shall be exercised only under exceptional circumstances.

7. The learned Counsel appearing for the petitioner has placed reliance on the decision of this Court in *Navjot Singh Sidhu's case* (supra). But in that case, the petitioner was a sitting MP and he could have continued as an MP even after his conviction and sentence in view of Section 8(4) of the Representation of People Act, 1951. The petitioner in *Navjot Singh Sidhu's case* (supra) resigned and

expressed his desire to contest the election. In fact, that was a case where the trial court acquitted the petitioner and the High Court, in reversal, found the petitioner guilty. It was in those circumstances this Court granted stay of the order of conviction and sentence in that case.

8. In the present case, no such circumstances are in favour of the petitioner. In view of the serious offence for which he has been convicted by the Special Judge, we are not inclined to suspend the conviction and sentence awarded by the Special Judge in the present case. We make it clear that we do not express any opinion on the merit and, if any of the observations made in this order, even it has remote possibility to prejudice either parties, we state that the same is only made for the purpose of disposal of Cr. M.P. No. 4087 of 2009- application for suspension/stay of conviction.

9. In the result, Cr. M.P. Nos. 4087/2009, 5229/2009, 5230/2009, 5237/2009 and 5314/2009 are dismissed.