

UNION OF INDIA
v.
MOHD. SADIQ RATHER

NOVEMBER 17, 1992

[M.H. KANIA, CJ. N.M. KASLIWAL AND N.P. SINGH, JJ.]

Criminal Law: Terrorist and Disruptive Activities (Prevention) Act, 1987—Sections 20(8) and (9)—Bail—Conditions necessary for release—Charge sheet/Police report submitted before Designated Court—Bail application of accused—Considered and accused released on bail by another Designated Court without perusing Charge-sheet/Police Report—Whether proper.

Non-obstante clauses in different sections—Effect of—Whether provisions of Act have over-riding effect over provisions and procedure prescribed under the Criminal Procedure Code, 1973 and Evidence Act, 1872.

The respondent, against whom and 14 others a charge sheet was filed before the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987, filed an application for bail before that Designated Court. This application was transferred to another Designated Court for disposal. The application was opposed by the prosecution, on grounds, *inter alia*, that the respondent was instrumental in the abduction and confinement of the Vice-Chancellor of a University and his Private Secretary and as the evidence collected disclosed the involvement of the respondent, he should not be released on bail. However, the Designated Court directed the release of the respondent on bail, on the finding, that there were reasonable grounds for believing that the respondent was not guilty of the offence under the Act.

In the appeal before this Court against the Designated Court's order, on behalf of the appellant-Union of India it was contended that after the conclusion of the investigation, charge-sheet, which should be deemed to be a Police Report within the meaning of sub-section (2) of Section 173 of the Criminal Code, 1973, was forwarded to the Designated Court concerned, but the application for bail was heard and disposed of by another Designated Court, without perusing the Police Report so submitted.

A On behalf of the respondent, it was contended that non-availability of the Police Report submitted after investigation should not affect in any manner the order directing the release of the respondent.

Disposing of the appeal, by special leave, this Court

B HELD: 1.1. On a plain reading of sub-section (8) of Section 20 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, it is clear that before a person who has been accused of an offence punishable under the Act is released on bail, two conditions must be fulfilled; (a) an opportunity must be given to the Public Prosecutor to oppose the application for such release, (b) the Court must be satisfied that there are reasonable grounds for believing that the said accused is not guilty of such offence. Therefore, an application for bail filed on behalf of a person, who has been accused of an offence punishable under the Act has to be examined carefully and cautiously on the basis of charges levelled in the first information report, and the evidence collected in course of the investigation. These conditions are in addition to those under the Criminal Procedure Code, 1973. This position has been made explicit by sub-section (9) of Section 20 of the Act.

[84-H; 85-A, B]

E 1.2. The Police Report submitted after the investigation of an alleged offence is not just mere expression of the opinion of the Investigating officer having no connection or nexus with the materials collected during the investigation. In view of sub-section (5) of Section 173 of the Code of Criminal Procedure, 1973, when such report is in respect of a case to which Section 170 of the Code is applicable i.e. where it appears to the Investigating Officer 'that there is sufficient evidence or reasonable ground...' the Investigating Officer should forward to the Magistrate along with the report all documents and the statements recorded under Section 161 of the Code. The framers of the Code have vested powers in the Magistrate under Section 190(1)(b) to take cognizance of any offence upon such a Police Report. If Magistrate can take cognizance of an offence on the basis of a Police Report submitted under Section 173(2) of the Code, such a Police Report cannot be held to be irrelevant while considering an application for bail under sub-section (8) of Section 20 of the Act, as to whether there are reasonable grounds for believing that the accused in question is guilty of such offence and as such he should be directed to be released.

[86-E-H; 87-A]

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13. In the instant case, the Designated Court should have perused the charge-sheet/Police Report submitted after the conclusion of the investigation before passing the order, directing the release of the respondent on bail. The Designated Court, before which the charge-sheet/Police Report has been filed, should now hear the application for bail filed on behalf of the respondent afresh, and peruse the Police Report along with the documents and statements recorded, which have been forwarded under sub-section (5) of Section 173 of the Code and pass an order, as early as possible.

[87-C-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 680 of 1992.

From the Judgment and Order dated 24.1.92 of the Designated Court, Srinagar in Case FIR No. RC. 5(S) 90-SIU-V/SIC-II/CBI, U/S. 120-B, 302, 341, 364 RPC and Section 3 of TADA 1987.

V.R. Reddy, Additional Solicitor General, G. Nageshwar Reddy, C.V.S. Rao Advs. with him for the Appellant.

R.A. Jain, M.S.A. Farooqui and R. Sasiprabhu, Advs. for the Respondent.

The Judgment of the Court was delivered by

N.P. SINGH, J. Special leave granted.

This appeal has been filed on behalf of Union of India for setting aside an order passed by the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as "the TADA Act"), directing the release of the respondent on bail, on a finding that there are reasonable grounds for believing that the said respondent was not guilty of the offence under the Act aforesaid.

Mushir-ul-Haq, Vice-Chancellor of Kashmir University, and his Private Secretary, Abdul Gani, were abducted on 6.4.1990 by the militants. In connection with the said incident a first information report was lodged for offences under sections 364, 341 and 120B of the Penal Code and section 3 of the TADA Act. Both the hostages were killed on 10.4.1990 as the State Government did not yield to the demands of the terrorists. Thereafter, Section 302 of the Penal Code was also added. The investigation of the case was transferred to the Central Bureau of Investigation

A (hereinafter referred to as "the CBI") by a notification issued by the Government of India. After investigation, charge-sheet was submitted on 23.11.1991 before the Designated Court under the TADA Act at Jammu against 15 accused persons including respondent Mohd. Sadiq Rather.

B It may be mentioned that the said respondent filed an application for bail before the Designated Court at Jammu. The said application was transferred to the Designated Court at Srinagar for disposal. It is the case of the appellant that the said application for bail was opposed by the Special Prosecutor of C.B.I. on grounds *inter alia* that the respondent was instrumental in the abduction and confinement of the Vice-Chancellor and
C his Private Secretary in his house and in the course of investigation evidences have been collected which disclose the involvement of the said respondent, as such he should not be released on bail. However, by the impugned order dated 24.1.1992, the Designated Court at Srinagar directed the release of the respondent on bail.

D The TADA Act makes special provisions for the prevention of, and for coping with, terrorist and disruptive activities, some of which are different from the provisions of the Code of Criminal Procedure (hereinafter referred to as "the Code"). In view of the *non-obstante* clause in different sections, the provisions of the TADA Act have over-riding effect
E over the provisions and procedure prescribed under the Code and the Evidence Act. Sub-section (8) of Section 20 of the said Act says:-

"Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless -

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

H On a plain reading a person who has been accused of an offence punish-

able under the Act aforesaid before he is released on bail two conditions must be fulfilled (a) an opportunity must be given to the Public Prosecutor to oppose the application for such release, (b) the Court must be satisfied that there are reasonable grounds for believing that the said accused is not guilty of such offence. In view of the aforesaid conditions, it cannot be disputed that an application for bail filed on behalf of a person who has been accused of an offence punishable under the Act has to be examined carefully and cautiously on basis of the charges levelled in the first information report, and the evidence collected in course of the investigation.

The learned Additional Solicitor General appearing on behalf of the appellant pointed out that in the instant case after conclusion of the investigation charge-sheet which shall be deemed to be a Police Report within the meaning of sub-section (2) of Section 173 of the Code, was forwarded to the Designated Court at Jammu, whereas the application for bail filed on behalf of the respondent was heard and disposed of by the Designated Court at Srinagar without perusing the Police Report so submitted. This fact is not in dispute. According to the learned counsel who appeared for the respondent, non-availability of the Police Report so submitted after investigation shall not effect in any manner the order directing the release of the respondent.

The relevant part of Section 173 of the Code provides:-

"173. Report of police officer on completion of investigation.- (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating -

(a) the names of the parties :

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

A (d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

B (f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170.

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(5) When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report -

D (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses."

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It need not be impressed that the Police Report submitted after the investigation of an alleged offence is not just mere expression of the opinion of the Investigating Officer having no connection or nexus with the materials collected during the investigation. In view of sub-section (5) of Section 173 when such report is in respect of a case to which Section 170 of the Code is applicable i.e. where it appears to the Investigating Officer 'that there is sufficient evidence or reasonable ground ...' the Investigating Officer shall forward to the Magistrate along with the report all documents and the statements recorded under Section 161 of the Code. The framers of the Code have vested powers in the Magistrate under Section 190(1)(b) to take cognizance of any offence upon such a Police Report. If Magistrate can take cognizance of an offence on the basis of a Police Report submitted under Section 173(2) of the Code, how such Police Report can be held to be irrelevant while considering an application for bail under sub-section (8) of Section 20 of the TADA Act, as to whether there are reasonable grounds for believing that the accused in question is not guilty of such

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offence and as such he should be directed to be released. The conditions for grant of bail specified under sub-section (8) of Section 20 of the TADA Act are in addition to those under the Code. This position has been made explicit by sub-section (9) of Section 20 of the TADA Act which says :- A

"The limitations on granting of bail specified in sub-section (8), are in addition to the limitations under the Code or any other law for the time being in force on granting of bail." B

According to us, the Designated Court should have perused the Charge-sheet/Police Report submitted after the conclusion of the investigation before passing the impugned order. Accordingly, the order dated 24.1.1992 directing the release of the respondent on bail is set aside. We direct the Designated Court, before which the Charge-sheet/Police Report has been filed, to hear the application for bail filed on behalf of the respondent afresh and to peruse the Police Report along with the documents and statements recorded, which have been forwarded under sub-section (5) of Section 173 of the Code and to pass an order in accordance with law. C D

The respondent shall surrender within three weeks from today before the Designated Court and the Designated Court is directed to dispose of the application for bail as early as possible. E

Before we part with this order we may mention that although both the parties had referred to different documents, statements including some of the paragraphs of the Police Report, during the course of the hearing of this appeal, but we are not expressing any opinion on the merit of the case, being conscious of the fact that any expression of opinion by this court is likely to prejudice one party or the other. F

N.P.V.

Appeal disposed of.