

THE STATE OF GUJARAT
v.
GADHVI RAMBHAI NATHABHAI AND ORS. ETC.

JUNE 20, 1994

[P.B. SAWANT AND N.P. SINGH, JJ.]

Terrorist and Disruptive Activities (Prevention) Act, 1987 :

Sections 5 and 20—Prosecution under TADA—Bail—Grant of—Designated Court to find out whether there are reasonable grounds for believing that accused persons were guilty of an offence under TADA—Not to exercise power of Trial Court—Not to weigh materials collected during investigation—Granting bail otherwise would amount to acquittal even before the conclusion of investigation.

According to the prosecution on receipt of information that accused-respondents had smuggled arms and ammunitions, a police raid was conducted at the residential premises of the accused-respondents and large quantities of arms and ammunitions of foreign origin were recovered. Huge amount of cash to an extent of more than 2 crores was also recovered. It was alleged that the accused-respondents were the main landing agents of smugglers controlling the activities from Dubai. They were charged under various provisions of the Arms Act, TADA Act and Section 135 of the Customs Act.

The accused-respondents were released on bail by the designated Court, against which the State preferred the present appeal by special leave.

Appellant-State contended that the accused-respondents were freely distributing arms, ammunitions and explosives on a very large scale in States of Punjab, Assam and Kashmir.

Allowing the appeals, and setting aside the order granting bail, this Court

HELD : 1. Instead of finding out as to whether there were reasonable grounds for believing that the accused persons were not guilty of an offence

A under the TADA Act, the Designated Court has virtually purported to acquit the accused-respondents of the charges levelled in respect of contravention of Sections 3, 4 and 5 of the TADA Act. While exercising the power to grant bail, the Designated Court is not expected to exercise the power of the Trial Court and record a finding which is expected to be recorded at the conclusion of the trial. [167-E-F-G]

B 2. It is true that for the purpose of grant of bail, the framers of the TADA Act require the Designated Court to be satisfied that there were reasonable grounds for believing that the accused concerned was not guilty of such offence but this power cannot be exercised for grant of bail in a

C manner which amounts virtually to an order of acquittal, giving benefit of doubt to the accused person after weighing the evidence collected during the investigation or produced before the Court. At that stage the Designated Court is expected to apply its mind as to whether accepting the allegations made on behalf of the prosecution on their face, there are

D reasonable grounds for believing that the accused concerned was not guilty of the offence. The Designated Court is not required to weigh the material collected during the investigation. [167-H; 168-A-B-C]

3.1. It will not be proper for this Court to express opinion on the merits of the case while considering the question as to whether the Designated Court was justified in coming to the conclusion that there were no

E reasonable grounds for believing that the accused-respondents were guilty of any of the offences under the Act because that is bound to prejudice the parties. [168-D-E]

3.2 The Designated Court should not have directed release of the F accused-respondents on bail. [168-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 357-358 of 1994.

G From the Judgment and Order dated 4.9.93 of Sessions Judge designated Court, Jamnagar (Gujarat) in Criminal Misc. (Bail) Application No. 583 of 1993.

Altaf Ahmad, Additional Solicitor General, Ms. Meenakshi Arora, Anip Sachthey and Nigam Shukla for the appellant.

H Ram Jethmalani, Uday Kumar Sagar, P.H. Parekh, S. Fazal and

Rajesh Kumar for the Respondents.

A

The Judgment of the Court was delivered by

N.P. SINGH, J. Leave granted.

These appeals have been filed on behalf of the State of Gujarat B against orders passed by the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA Act') directing release of the Respondents Gadhvi Rambhai Nathabhai, Karu Rambhai Gadhvi, Hitesh Vajshi Pindariya, Nagshibhai Nathabhai, Hamir Sajan Ahir, Ranmal Bogha Ahir, Bhimshi Lakhman and Ibrahim Hasan Vagher, on bail. The said respondents are alleged to have committed offences punishable under Sections 25(1) (a)(b), 25(1-A), 25(1-AA), 25(1-AAA), 25(1- B) of the Arms Act, Sections 3, 4 and 5 of the TADA Act and Section 135 of the Customs Act.

B

It is the case of the prosecution that on receipt of an information on 19.6.1993, that accused-respondents Gadhvi Ramhbai Nathabhai and Hitesh Vajshi Pindariya had stored smuggled arms and ammunitions in their residential premises, situated at Harsidhchinagar of Khambhai town, the District Superintendent of Police along with the Sub-Divisional Magistrate, two Deputy Superintendents of Police and other officials, E raided the residential house of the aforesaid accused persons. During the search, Sub-Machine Gun made in Spain, several foreign made Revolvers and Pistols and cash amounting to Rs. 1,07,00,000 (Rupees One crore and seven lakhs) were recovered from accused-respondent Gadhvi Ramhbai Nathabhai. Several foreign made arms, huge quantity of cartridges and Rs. 1,07,67,000 (Rupees One crore seven lakhs and sixty-seven thousand) were F also recovered from accused-respondent Nagshibhai Nathabhai. It is also the case of the prosecution that from a Jeep Car near the farm house of accused Hamir Sajan Ahir, a gunny bag was recovered in which there were two A.K.56 Rifles, one Tomy Gun, two Pistols, two empty magazines of A.K. 56 Rifles, two big Walky Talky sets, a small Transmpter, 98 cartridges of twelve bore, 191 cartridges of A.K.56 Rifles, 35 cartridges of Revolver. Similarly, from other accused persons several foreign made pistols and arms are alleged to have been recovered. It is alleged that the accused-respondents are working as main landing agents of notorious smugglers and the prime accused Haji Haji Ismail who is controlling the activities G from Dubai. In the special leave petitions filed before this Court, it has H

A been stated on behalf of the State that contraband articles like arms, ammunitions and explosives were being freely distributed in the troubled parts of the country like Punjab, Assam and Kashmir on a very large scale.

B The Designated Court after referring to the case of the prosecution and recovery of arms and ammunitions from the different accused persons observed in the impugned order :—

C "The accused *prima facie*, seem to have been involved in illegal import or otherwise possession of arms and ammunitions and the charge is difficult to be dislodged in view of the disclosure from the papers of investigation. However, there is a strong controversy regarding the applicability or otherwise and attraction of various provisions of the TADA Act."

Thereafter, it has said :

D "It is true that the accused are or were found to be in possession of Arms and ammunitions without permit or licence but there is nothing on record even to remotely connect them and *prima facie* establish that any of them had intended to over-awe the Government by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people or did any act or thing by using bombs, Dynamite or other explosive substance or committed or conspired or attempted to commit or abetted to commit activities as mentioned in S.3 and 4 of the TADA Act..... The Accused are simply the persons who had been lastly found in possession of such arms and ammunitions.

E The learned P.P. Mr. H.O. Bhatt tried to establish the connection with the recent Bombay Bomb Blast without any material on record and it would be too early to involve any person in the recent event of the country without probable nexus...."

F

G In respect of the applicability of Section 5 of the TADA Act, the Designated Court was of the view that it necessary to find out whether any material is available with the Investigating Officer to *prima facie* suggest that the possession of the unauthorised arms in any notified area was for indulging in terrorist acts or disruptive activities as set out in Sections 3 and 4 of the Act and in the absence thereof, the person need not be

H

prosecuted under Section 5 of the TADA Act but only in accordance with A the provisions of the ordinary law.

Sub-sections (8) and (9) of Section 20 of the TADA Act are as follows :—

"20(8). - Notwithstanding anything contained in the Code, no B 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 C 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. D

(9) 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."

From the impugned order, it appears that the Designated Court was conscious of the limitation prescribed on its power of granting bail by sub-section (8). But it appears that instead of finding out as to whether there were reasonable ground for believing that the accused persons were not guilty of an offence under the TADA Act, the Designated Court has virtually purported to acquit the accused-respondents of the charges levelled in respect of contravention of Sections 3, 4 and 5 of the TADA Act. It need not be impressed that while exercising the power to grant bail, the designated Court is not expected to exercise the power of the Trial Court and to record a finding which is expected to be recorded at the conclusion of the trial. The Designated Court has not only weighed the materials collected during the investigation but has also examined the submissions made on behalf of the accused persons in the light of several judgments of the High Court and this Court for the purpose of coming to the conclusion that no case for contravention of any provisions of the Act has been made out. E F G

It is true that for the purpose of grant of bail, the framers of the Act H

- A require the designated Court to be satisfied that there were reasonable grounds for believing that the accused concerned was not guilty of such offence but this power cannot be exercised for grant of bail in a manner which amounts virtually to an order of acquittal, giving benefit of doubt to the accused person after weighing the evidence collected during the investigation or produced before the Court. At that stage the Designated Court is expected to apply its mind as to whether accepting the allegations made on behalf of the prosecution on their face, there are reasonable grounds for believing that the accused concerned was not guilty of the offence. At that stage the Designated Court is not required to weigh the material collected during the investigation. The Designated Court itself while dealing with the submission of the counsel for the State regarding the involvement of the accused persons in Bombay Bomb Blast has observed : "..... It would be too early to involve any person in the recent event of the country without probable nexus". Still while examining as to whether there reasonable grounds for believing that the accused were not guilty of such offence, the Designated Court has passed an order of acquittal even before conclusion of the investigation.

It will not be proper for this Court to express opinion on the merit of the case while considering the question as to whether the Designated Court was justified in coming to the conclusion that there were no

- E reasonable grounds for believing that the accused-respondents were guilty of any of the offences under the said Act because that is bound to prejudice the parties. But we are satisfied that the Designated Court should not have directed release of the accused-respondents on bail. Accordingly, the orders granting bail to the accused-respondents in the two bail applications filed on their behalf are set aside and their bail bonds are cancelled.

It may be mentioned that pursuant to the order passed by this Court, Respondents Nos. 2 to 4 in Special Leave Petition No. 457 of 1994 have already surrendered. So far as Respondent No. 1, Gadhvi Rambhai Nathabhai, is concerned, we were informed that he was in custody under

- G the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA). Because of it neither non-bailable warrant or arrest was issued against him nor was he directed to surrender. But in view of the fact that the order granting him bail by the Designated Court has been set aside, the Designated Court shall pass an order directing him to
- H be taken into custody in connection with this case as well.

By order dated 11.3.1994, accused Respondent No. 2 Karu Rambhai Gadhwvi, Who had been taken into custody, was directed to be released on parole because it was stated on his behalf that he had to appear for his XIIth Standard Examination commencing from 29.3.1994. It was further directed that the said order will remain in force till further orders of this Court. In view of the fact that the order of the Designated court directing release of the said accused Karu Rambhai Gadhwvi has been set aside and his bail bond has also been cancelled, he shall surrender within two weeks from today failing which all steps shall be taken to take him into custody. The investigation if not concluded, shall be concluded as early as possible and if chargesheet is submitted against the accused-respondents or against any one of them, the Designated Court shall proceed with trial and conclude the same within six months.

The appeals are allowed accordingly.

G.N.

Appeals allowed.