

MAHMOOD RAJASA SAIYED

A

v.

STATE OF GUJARAT

(Criminal Appeal No. 1771 of 2008)

NOVEMBER 11, 2008

B

**[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]**

*Prevention of Terrorism Act, 2002 – s. 49(6), (7) and s. 34 – Arrest of appellant for offences punishable under IPC, Arms Act and POTA – Bail application u/s. 49(6) and (7) – Dismissal of – On the ground that appellant found in possession of fire-arms – Ten live cartridges recovered from co-accused and his statement recorded u/s. 32 – Notification u/s. 4 of POTA in effect when accused charge-sheeted for offence of criminal conspiracy – Appeal u/s. 34 – Rejection of bail – Interference with – Held: Not called for.*

C

D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1771 of 2008.

From the final Judgment and Order dated 17.7.2006 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 1432 of 2004.

E

Nima Ramakrishan and M.A. Chinnasamy for the Appellant.

F

Hemantika Wahi for the Respondent.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

G

2. Challenge in this appeal is to the order passed by a Division Bench of the Gujarat High Court dismissing the appeal filed under Section 34 of Prevention of Terrorism Act, 2002 (in short 'POTA').

A 3. Factual details have been indicated in Criminal Appeal (Arising out of S.L.P (Crl.) No.4876 of 2006) disposed of today.

B 4. Appellant was arrested in connection with POTA Case No.12 of 2003 arising out of ICR No.6 of 2003 of the DCB Crime Police Station, Ahmedabad for offences punishable under IPC, Arms Act and POTA. An application for bail was filed in terms of Section 49(6) and (7) of POTA. The bail application was rejected primarily on the ground that the appellant was found in possession of country made revolver and foreign made pistols and undisputedly same was recovered from his possession. Ten live cartridges were also recovered from another co-accused. The statement of the co-accused was recorded under Section 32 of POTA. The High Court held that it is not a fit case for grant of bail. Though, there was allegation of illegal custody no material was placed in that regard. In view of the reasons recorded by the High Court and the trial Court for rejecting the bail application, we are not inclined to interfere with the appeal.

C 5. The Trial Court has observed as follows:

E "It is true that, the statement of Anas does not disclose this fact but, when the notification u/s 4 of the POTA is in effect and when the accused are charge-sheeted for the offence u/s 120-B, criminal conspiracy, the Court sees no reason as to why at this juncture the discretion should be used in his favour especially when the criminal conspiracy is alleged to be intended by the accused to terrorize the people of a particular section as well as to shake the integrity and unity of the nation in the aftermath of Godhra incident where some of the accused have also taken the training from the neighbouring country Pakistan in deadly weapons, arms and ammunitions and who also intended to make use of that training by procuring weapons to execute the said conspiracy which are allegedly supplied by the present applicant accused."

H

6. The High Court has also observed in this regard as A follows:

"The appellant was found in possession of country made revolver and foreign made pistol and the same was recovered from his pocket. The panchnama in respect thereof was prepared. The joint panchnama, which was prepared also mentions about the 10 live cartridges which were recovered from another accused Mohd. Tarik. The statements of the co-accused recorded under Section 32 of the POTA have been perused by us and prima facie, the statements given by the co-accused indicate involvement of the appellant in the commission of crime. The contention raised by the learned Advocate for the appellant that the statement of the co-accused Anas Machiswala does not disclose prima facie involvement of the appellant is without any substance, as notification under Section 4 of the POTA was in effect when the accused was charge-sheeted, and since the accused was charge-sheeted for the offence punishable under Section 120B, which is for criminal conspiracy, we see there was no reason to enlarge the appellant on regular bail. With regard to the statement of co-accused, which was recorded under section 32 of the POTA, save and except the statement recorded under section 32 of the POTA, further corroboration was also forthcoming, Thus, the Court has to look into the entire material which was available against the accused. The prima facie evidence was available against the appellant and as he was found in possession of the fire-arms, the learned Special Judge has rightly not used the discretion to enlarge the appellant on bail and we also see no reason to interfere with the order passed by the learned Judge in appeal preferred by the appellant under Section 34 of the POTA. As regards the next submission of learned advocate for the appellant that the accused has remained in judicial custody for nearly two years, we have considered the provisions of sub-sections

B

C

D

E

F

G

H

A (6) and (7) of section 49 of the POTA and the rigorous imposed therein. The rigorous would definitely go with the completion of the period of one year as contemplated under sub-section (7) of section 49 of the POTA, but considering the provisions of section 439 of the Code of Criminal Procedure along with evidence available against the accused, in our view, the accused has not made out a case for this enlargement on regular bail."

B

C 7. However, it is stated by learned counsel for the respondent-State that the trial is at the advance stage. The trial Court is requested to complete the trial as early as practicable.

8. The appeal is dismissed.

N.J.

Appeal dismissed.