

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

Bail Appl..No. 973 of 2015 ()

**CRIME NO. 131/2015 OF HILL PALACE POLICE STATION,
ERNAKULAM DISTRICT**

PETITIONER/ACCUSED :

**TUSHAR NIRMAL SARATHI, AGED 36 YEARS,
S/O. T.B.VIJAYASARATHI, 1/395, VARSHA,
KALPATHI P.O., PALAKKAD-2 VILLAGE
(NOW RESIDING AT ROYAL WEST ENCLAVE
FLAT NO.8-D, AMBILI NAGAR, TRIPUNITHURA P.O.,
NADAMA VILLAGE.**

**BY ADVS.SRI.K.S.MADHUSOODANAN
SRI.THOMAS CHAZHUKKARAN
SRI.M.M.VINOD KUMAR
SMT.K.M.RAMYA
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER**

RESPONDENTS/COMPLAINANT & FORMAL PARTY :

**1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

**2. SUB INSPECTOR OF POLICE,
HILL PALACE POLICE STATION, TRIPUNITHURA.**

R1 & R2 BY DIRECTOR GENERAL OF PROSECUTION SRI.T.ASIF ALI.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 03-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

[CR]

B. KEMAL PASHA, J.

.....
B.A. No.973 of 2015
.....

Dated this the 3rd day of March, 2015

O R D E R

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Petition filed under Section 439 Cr.P.C.

2. Petitioner is the accused in Crime No.131/2015 of Hill Palace Police Station registered for the offences punishable under Sections 10(a)(i)(b), (ii) and 13(i)(a) and (b) read with Section 3 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'the UAPA').

3. The crime has been *suo motu* registered by the Circle Inspector of Police, Hill Palace Police Station, on the basis of a search and seizure conducted by him at the residence of the petitioner at Ambili Nagar, Thripunithura. It is alleged that during such search, the minutes book of '*Janakeeya Manushiavakasha Prasthanam*' has been seized. The allegation is that the said organisation is a formation or at least a front organisation of the Communist

Party of India (Maoist), which is recognised, identified and scheduled as a terrorist organisation as item No.34 of the First Schedule of the UAPA. He has been in custody for the period from 30.01.2015 onwards.

4. Heard learned counsel for the petitioner Sri.K.S.Madhusoodanan and the learned DGP Sri.Asif Ali.

5. According to the learned counsel for the petitioner, inciting an idea cannot be styled as an offence within the meaning of the provisions of any of the statutes. Further, according to the learned counsel for the petitioner, there is absolutely nothing to show that he has advocated, propagated or worked for any such idea relating to any terrorist organisation and, therefore, Section 13 of the UAPA cannot be invited. It is also argued that in the light of the constitutional protections contained in Article 19, unless and until it is shown that there is any act which causes imminent threat or imminent danger to the peaceful life, even if such an idea is propagated, it cannot be said that it is an offence

within the meaning of Section 13 of the UAPA. It is also pointed out that by time and again, the Supreme Court has held that unless and until imminent threat is involved or imminent danger is involved, mere literal interpretation of the provisions contained in Section 13 will violate the fundamental right guaranteed under Article 19 of the Constitution of India.

6. The argument in short is that the investigating officers have not collected any evidence to show any imminent threat or imminent danger to the peaceful life in the country from the part of the petitioner and, therefore, no offence under Section 13 can be invited in the case of the petitioner. The learned counsel for the petitioner has invited the attention of this Court to the decision in ***State of Kerala Vs. Raneef [(2011) 1 SCC 784]***, wherein it was held by the Supreme Court by relying on ***Scales Vs. United States*** that there must be clear proof that the defendant specifically intends to accomplish the aims of the organisation by

resorting to violence. It was also held in paragraph 10 of the said decision that merely because an organisation has not been declared as an 'unlawful association', it cannot be said that the said organisation could not have indulged in terrorist activities.

7. The learned counsel for the petitioner has invited the attention of this Court to the decision in ***Indra Das Vs. State of Assam [(2011) 3 SCC 380]***, wherein it was held that the offence under Section 10 of the UAPA, which on its plain language make mere membership of a banned organisation as a crime; at the same time, that has to be read down by departing from the literal rule of interpretation in such cases, otherwise the said provision will become unconstitutional as violative of Articles 19 and 21 of the Constitution. Ordinarily, for interpreting a provision or statute, if it is possible to interpret the same in its literal sense, normally that has to be preferred. At the same time, the Supreme Court has held that while interpreting Section 3

(5) of TADA as well as Section 10 of the UAPA, there should be a deviation from the normal rule of literal interpretation, as an interpretation of the said statutory provisions through literal interpretation would tend to make the said provisions unconstitutional within the meaning of Articles 19 and 21 of the Constitution. It was held in paragraph 41 that,

“Had there been no Constitution having fundamental rights in it then of course a plain and literal meaning could be given to Section 3(5) of TADA or Section 10 of the Unlawful Activities (Prevention) Act. But since there is a Constitution in our country providing for democracy and fundamental rights we cannot give these statutory provisions such a meaning as that would make them unconstitutional.”

8. Sri.Madhusoodanan has given emphasis to the point by the observation made by Jefferson as *“elective despotism was not in the Government we fought for”*. With utmost vigor and vitality, the learned counsel for the petitioner has pointed out that absolute human rights

violation is going on in forests wherein the tribal are the forest dwellers and basic human rights are being denied to them, which clearly have a tendency of severe unrest among the tribal communities. It is argued that unless and until, ideas are propagated for the protection of basic human rights of such forest dwellers, they cannot have any demonstration of their miseries in public and they cannot come and agitate for the protection of their human rights. The argument in short is that an association formed for their protection and by lending support for the protection of their basic human rights, cannot be styled as a terrorist organisation.

9. *Per contra*, Sri.Asif Ali has argued that the association named '*Janakeeya Manushiavakasha Prasthanam*', of which the petitioner is an office bearer, can clearly be styled as a formation of the Maoist organisation, which is banned as item No.34 of the First Schedule of UAPA, and it is not only a formation, whereas a front

organisation of such a banned terrorist organisation. Not only the CPI(Maoist) is the terrorist organisation identified under item No.34 of the First Schedule of UAPA, whereas along with it, all its formations and front organisations are also banned. The learned DGP has invited the attention of this Court to some of the contents of the minutes book seized from the premises of the petitioner, which clearly show that it has lent support to the bloodshed as well as violence committed by some of the front organisations or formations of the CPI(Maoist).

10. Even by becoming a member of such a banned organisation in the name and style as Communist Party of India (Maoist), definitely a person can invite an offence within the meaning of Section 10 of the UAPA. The question as to whether the '*Janakeeya Manushiavakasha Prasthanam*', of which the petitioner is one of the office bearers, can be treated as a terrorist organisation within the meaning of item No.34 of the First Schedule of UAPA is the

crux of the matter. If an association or organisation is lending support to the programs of CPI(Maoist) or any of its front organisation or formations, such an organisation or association can also be styled as a formation or a friend organisation of the CPI(Maoist). From the wordings contained in some of the contents of the minutes book seized by the police from the premises of the petitioner, it seems that the said association is also in a way lending support to some of the programs of the CPI(Maoist). It justifies some militant acts committed by the persons associated with the said terrorist organisation. In such a case, it cannot be said that the said association should not be classified as a front organisation or formation of the said banned terrorist organisation.

11. The learned DGP has pointed out that during the course of the investigation, the investigating officer could seize many vital materials like pamphlets, etc. which clearly reveal some nexus of the petitioner with the members of the

banned organisation, which had revolted against Multinationals like, Nitta Jelatin, Kentucky, Mc Donald, etc. It is a fact that the office of Nitta Jelatin at Panampilly Nagar was smashed and destroyed by the militant group and it seems that the responsibility of the same has been accepted by CPI(Maoist). Similarly, there were revolts against Kentucky and Mc Donald, who are also multinationals, at Palakkad. The revolt has resulted in smashing and destroying the outlets of Kentucky and Mc Donald which has invited the serious concern in the multinational relationship of this country.

12. Of course, it is true that there are human rights violations among the tribal in the forests. At the same time, one cannot have recourse to methods to overawe a democratically elected government or legally formed governmental machinery, even though people are being tempted to have recourse to such things. We cannot white wash the illegal activities which tend to overawe a

government or governmental machinery, which are constitutionally installed, through violence. If such thing is white washed, that will tend to disarray the whole administration of the nation.

13. The learned counsel for the petitioner has finally expressed his anguish and pointed out that an innocent lawyer is unnecessarily being detained for the period from 30.01.2015 onwards, merely because he had possessed one or two pamphlets or some books relating to strikes by the tribal and other people against injustice. That is not the only case herein. The learned DGP has pointed out that the petitioner was keeping the Power of Attorney executed by a person named Roopesh, who is involved in a series of cases relating to attacks from the part of such a banned organisation. Of course, as a lawyer, no doubt, he is permitted to prepare and even keep a Power of Attorney. Here, in this case, it was pointed out that it was only a photocopy of the Power of Attorney. Whatever it is, coupled

with other circumstances, that also tend support to the case forwarded by the learned DGP regarding his association with a person, who has got serious criminal antecedents, especially relating to terrorist organisations.

14. According to the investigating officer, the continued investigation in the matter is required as incriminating materials are being unearthed presently. It has also been pointed out that the investigation has revealed the connections of the petitioner with the accused, who were directly executing the ideas of Maoist organisation by smashing and destroying the office of Nitta Jelatin. Even though confession before the police cannot be taken for any purpose, the investigating machinery can move based on it for continuing with the investigation. It is true that the learned counsel for the petitioner has justified the acts of the petitioner. At the same time, as rightly pointed out by the learned DGP, this Court is of the view that this is a case wherein continued investigation is required as the matter

poses severe threat from the part of the terrorist organisation called CPI (Maoist), which is banned as item No.34 in the First Schedule of UAPA. Every instances of human rights violations in the country cannot be set right by having recourse to bloodshed or violence. It seems that such organisations or associations by supporting and promoting the activities of the banned organisations like CPI (Maoist), are also landing in troubles by acquiring the status of terrorist organisations by assuming the status of formations or front organisations of CPI(Maoist). Things cannot be set at right by having recourse to bloodshed or violence. There is nothing wrong in reacting through lawful means or in a democratic way.

15. At this stage, if the petitioner is enlarged on bail, definitely, it will hamper the smooth investigation of the case. It is true that the continued incarceration is tiresome and painful; but, at the same time, it cannot be said that it is cruel when it is required for the continued investigation of

the case.

16. The contents of the CD, *prima facie*, reveal the complicity of the petitioner. The matter has to be thoroughly investigated. Considering the seriousness of the allegations against the petitioner and the present stage of the investigation, I am of the view that it is premature to consider the enlargement of the petitioner on bail at this stage.

In the result, this bail application is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/03/03

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PA to Judge