

***THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

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+CRIMINAL REVISION CASE No.234 OF 2015

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%Dated 20-03-2015

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#Shah Mudassir & another PETITIONERS/

ACCUSED

VERSUS

\$ State of Telangana, rep. by the

A.C.P., SIT, Hyderabad,

Through Public Prosecutor,

High Court, Hyderabad. RESPONDENT/

COMPLAINANT

! Counsel for Petitioner : M/s. Mohd. Shafiuddin

^ Counsel for Respondent : Public Prosecutor

< GIST :

> HEAD NOTE :

? Cases referred :

1998 Law Suit (AP)713

² (1994)4 SCC 602

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.234 OF 2015

ORDER:

Aggrieved by an order dated 06.02.2015 passed by the VII Additional Metropolitan Sessions Judge, Hyderabad in CrI.M.P. No.308 of 2015 in Crime No.338 of 2014 of

P.S.Gopalapuram/SIT, Hyderabad, wherein and whereunder the bail granted to the petitioners was cancelled, the present revision is filed.

The case of prosecution is as under :

The Accused 1 and 2 are native of Maharashtra and are alleged to be active members of SIMI, having contacts with Jihadi groups and others. It is alleged that the accused planned to go over to Afghanistan to undergo militant training to fight for Islamic State in India by waging Jihad. In the said process they are alleged to have created Face Book i/ds, and were chatting with persons staying in Pakistan and Afghanistan. A-1 became a good friend of A-2, who was maintaining a Madarasa in Malakpeta, Hyderabad and was also a member of SIMI. A-3 lured the accused with financial assistance and expressed his wish to watch the news of death of 500 Hindus in Bomb blast in India. A-3 is alleged to have asked A-1 to prepare title page poster for a book titled as "Jihad Kya Hai". It is alleged that A-2 came into contact with A-4, a Pakistani national and used to have a chat with him regularly and explained him about the preparation of bomb by providing formula. As a part of their conspiracy, A-1 and A-2 obtained passports, came down to Hyderabad to meet A-3 and proceeded towards Secunderabad railway station where they were apprehended by the Inspector of Police, Gopalapuram, during routine check at the station. Pursuant to the search, the incriminating material is said to have been seized from them. Thereafter, a case in Crime No.338 of 2014 came to be registered under Section 43 D(2)(A) of Unlawful Activities (Prevention) Act, 1967. As charge-sheet could not be filed within the prescribed period, by the Assistant Commissioner of Police, SIT, Hyderabad, he filed an application before the XIV Additional Chief Metropolitan Magistrate, Hyderabad, seeking extension of time for filing the charge-sheet. By an order dated 28.01.2015, the learned Magistrate dismissed the said application on the ground that the said application was not filed in accordance with procedure contemplated under Section 43 D(2)(b) of the Act and also not before the appropriate court as mentioned in the Act. Challenging the same, the State preferred CrI.M.P. No.308 of 2015 seeking cancellation of the said order, as the consequence of the said order would be to release the accused on bail. By an order dated 06.02.2015, the learned VII Additional Metropolitan Sessions Judge, Hyderabad allowed the application and cancelled the bail granted to the accused. Challenging the same, the present Revision is filed.

Insofar as the first issue as to "Whether bail granted to the accused can be cancelled

before he is released from Jail”, the same came up for consideration before this Court in **State of Andhra Pradesh rep. by Public Prosecutor v. Prakash Kumar Sahu @ Prakash Kumar Patnaiah**. In the said case, the accused was granted bail by the Metropolitan Sessions Judge, Vijayawada on 11.09.1998. He was directed to be released on bail on his executing a bond for Rs.50,000/- with two local sureties for like amount. An application under Section 482 Cr.P.C. was made seeking modification of the surety amount. During the pendency of the application before the High Court, the learned Public Prosecutor moved an application for cancellation of bail granted by the learned Metropolitan Sessions Judge. It was a case relating to theft of a crown from a Temple. The accused in the said case was a habitual offender and was resident of Madhya Pradesh. One of the arguments advanced before the Court was that question of cancelling the bail would not arise when the accused is not yet released from jail. Relying upon the judgment in *Aslam Babalal Desai v. State of Maharashtra*, this Court accepted the argument of the accused and held that cancellation of bail would not arise when the accused is still in Jail.

The second aspect that falls for consideration is “Whether the investigating agency on its own can make an application seeking extension of time for filing charge-sheet and whether the accused are entitled for release under Section 167(2) Cr.P.C. for non-filing of the charge-sheet within the stipulated time?”

Section 43-D of the Unlawful Activities (Prevention) Act 1967, reads as under :

“43-D. Modified application of certain provisions of the Code- (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly. (2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub- section (2),-

(a) the references to "fifteen days", "ninety days" and sixty days", wherever they occur, shall be construed as reference to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:- "Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also

explain the delay, if any, for requesting such police custody."

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that -

(a) the reference in sub-section (1) thereof -

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing."

A reading of Section 43-D of the Act would show that the provisions of Cr.P.C. shall apply insofar as they are not inconsistent with the provisions of Unlawful Activities (Prevention) Act, 1967. Further, from a reading of Section 43-D of the Act, it is clear that Section 167(2) of the Code shall apply in relation to a case involving an offence punishable under the Act subject to the modification in sub-section (2). Section 43-D states that if it is not possible to complete the investigation within a period of 90 days, the court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of 90 days, extend the said period upto 180 days.

A provision identical to Section 43-D is also found in Section 20(4) of Terrorist and Disruptive Activities Prevention Act, 1987 (in short "TADA"). The proviso to Section

20(4) of TADA also contemplate extension of time beyond 180 days on the basis of a report of Public Prosecutor indicating the progress of investigation and the specific reason for detention of the accused beyond the period of 180 days. Dealing with the said provision, the Apex Court in **Hitendra Vishnu Thakur and others etc. etc. v. State of Maharashtra and others**, held as under :

“Thus for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it, that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on the report of the public prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the Court "shall" release him on bail if he furnishes bail as required by the Designated Court.”

In the case on hand, there is no report submitted by the Public Prosecutor and on the other hand an application seeking extension of remand beyond the prescribed period came to be filed at the instance of the investigating agency. Though the accused are alleged to have committed offences, which according to the prosecution, endanger the security of the State, but at the same time compliance of mandatory provisions cannot be ignored and the indefeasible right which got accrued to the accused cannot be defeated.

For the aforesaid reasons there is no other option for this Court except to allow the Revision.

Accordingly, the Criminal Revision is allowed and the order impugned is hereby set-

aside.

Miscellaneous petitions, pending if any, in this Criminal Revision shall stand closed.

C. PRAVEEN KUMAR, J

Date:20.03.2015

Note : L.R. copy to be marked

B/o. GM