

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

Crl.A.Nos.791 & 792 of 2016

Dt:07.11.2016

Criminal Appeal No.791 of 2016

Between:

The State, repled by the National
Investigation Agency through the
Deputy Superintendent of Police,
NIA, Hyderabad.

... Petitioner

And

Saddam Hossain,
S/o Kafiulddin

... Respondent

JUDGMENT PRONOUNCED ON 07.11.2016

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

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< Gist:

> Head Note:

! Counsel for the appellant: Mrs. Sujatha

For Mr. P.Vishnu Vardhan Reddy

Special Public Prosecutor for NIA

^ Counsel for the Respondents: Mr. Sravan Kumar Naidana

? Cases Referred:

NIL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Crl.A.Nos.791 & 792 of 2016

Date:07.11.2016

Crl.A.No.791 of 2016

Between:

The State, repto by the National
Investigation Agency through the
Deputy Superintendent of Police,
NIA, Hyderabad.

..... Appellant

And:

Saddam Hossain,
S/o Kafiulddin

....Respondent/Accused No.1

Counsel for the appellant: Mrs Sujatha

For Mr. P.Vishnu Vardhan Reddy
Special Public Prosecutor for NIA

Counsel for the respondent: None appeared

AND

Crl.A.No.792 of 2016

Between:

The State, repto by the National
Investigation Agency through the
Deputy Superintendent of Police,
NIA, Hyderabad.

..... Appellant

And:

Amirul Hoque,
S/o Akbar Ali

....Respondent/Accused No.3

Counsel for the appellant: Mrs Sujatha

For Mr. P.Vishnu Vardhan Reddy
Special Public Prosecutor for NIA

Counsel for the respondent: Mr. Sravan Kumar Naidana

The Court made the following:

COMMON JUGMENT: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

Both these Criminal Appeals are filed by the State represented by the National Investigation Agency through its Deputy Superintendent of Police, Hyderabad, feeling aggrieved by separate, but identical orders dated 12.8.2016 passed by the learned II Additional District and Sessions Judge, Visakhapatnam in common Revision Case, i.e., Crl.M.P.Nos.662 and 709 of 2016 in R.C.No.2/2015/NIA/Hyderabad. The accusation against the respondents, who are accused Nos.1 and 3, respectively, is that accused No.1 in connivance with accused Nos.2 and 3 was circulating high quality fake counterfeit Indian currency in Rs.500/- and Rs.1,000/- denominations. The afore-mentioned case was registered against the accused for the offence under Section-489-(B) of the Indian Penal Code and Section-16 of the Unlawful Activities (Prevention) Act, 1967 (for short 'the 1967 Act').

The respondents/accused have filed separate bail applications before the Court below, wherein the main ground urged by them for grant of bail was that the Investigation Agency has filed the charge sheet and that, they are in jail beyond the statutory period of 180 days.

In the counter-affidavit filed by the appellant before the Court below, it has taken a specific plea regarding the

requirement of compliance of the proviso to Sub-section-(5) of Section-43(D) of the 1967 Act.

The lower Court while granting bail to the respondents observed that the offence alleged against the respondents is not punishable with death; that the respondents have been languishing in jail for the last 180 days; and that the prosecution failed to point out any circumstances whatsoever to keep the respondents in custody even after filing of the charge sheet. The Court below further observed that the respondents were already given for Police custody and thoroughly interrogated on the complicity of other persons in the crime and that therefore, it does not find any reason whatsoever to keep the respondents in jail even after the expiry of the statutory period of 180 days.

In Criminal Appeal No.791 of 2016, letter, dated 31.10.2016, addressed by one Dr. M.Vara Prasad, Superintendent of Jails, Central Prison, Rajamahendravaram to the Assistant Registrar (In-charge of Criminal Section) has been filed, wherein it is stated that the original notice along with the order copy pertaining to accused No.1 was served on the latter on 31.10.2016 by duly obtaining his signature on the duplicate copy of the notice. The copy of notice containing the signature of accused No.1 has been enclosed to the said letter. In spite of

service of notice, accused No.1 has not entered appearance either in person or through a counsel.

In Criminal Appeal No.792 of 2016, Mr. Sravan Kumar Naidana, learned counsel, has entered appearance for accused No.3.

We have heard learned counsel for both the parties and perused the record.

As noted hereinbefore, the case has been registered against the respondents not only for an offence under Section-489-(B) of the Indian Penal Code but also for an offence under Section-16 of the 1967 Act. In such case, before granting bail to the accused, the Court has to comply with the requirements of the statutory provisions governing the field. Sub-section-5 of Section-43(D) of the 1967 Act postulates that notwithstanding anything contained in the Code of Criminal Procedure, no person accused of an offence punishable under Chapters-IV and VI of the 1967 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. The proviso to the said provision, which is relevant for the purpose of this case, reads as under:

“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.”

The above reproduced proviso is couched in mandatory terms. It takes away the discretion of the Court to grant bail wherever it is of the opinion that there are reasonable grounds for believing that the accusation against the accused is *prima facie* true. The 1967 Act being a special provision, it over rides the provisions of the Code of Criminal Procedure wherever the provisions come into conflict with each other. Therefore, while dealing with a bail application filed by the accused charged under the 1967 Act, it is incumbent upon the Court to consider whether there are reasonable grounds for believing that the accusation against the accused is *prima facie* true and on such consideration, if the Court comes to the conclusion that no reasonable grounds exist to believe that the accusation against such person is *prima facie* true, then only, it can grant bail. Unless such satisfaction is recorded by the Court, it cannot grant bail merely based on the number of days for which the accused charged under the 1967 Act are in judicial remand/jail.

A perusal of the order of the lower Court shows that it has failed to notice the above discussed mandatory requirement envisaged under the proviso to Sub-section-5 of Section-43(D) of the 1967 Act and record a finding as to whether the accusation against the accused is *prima facie* true or not.

For the afore-mentioned reasons, both the impugned orders cannot be sustained and the same are, accordingly, set aside. The matters are remanded to the lower Court for considering the bail applications of the respondents-accused Nos.1 and 3 afresh and passing appropriate fresh orders keeping in view the observations made hereinbefore.

Subject to the above observations and directions, both the Criminal Appeals are allowed.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE M.S.K.JAISWAL

07th November 2016

Note:

LR copies to be marked.

B/o

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