

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

*THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+ **Crl.P.No.5490 of 2018**

19.06.2018

#Between:

Prudviraj Ankala and another

...Petitioners/ A. 1&A. 2

AND

The State of Andhra Pradesh
Rep. by its Public Prosecutor,

..... Respondent/ complainant

!Counsels for the petitioners

: Sri V. Raghunath,
Sri Ayesha Saba,
Sri Veera Babu, G,
Sri Amir Hussain

Counsel for the respondent

: Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

¹ AIR 2011 SC 957

² 2011 (1) Scale 8

³ 384 US 17(1966)

⁴ AIR 1962 SC 955

⁵ 395 U.S 444(1969)

⁶ 2018 (1) ALD (Crl.) 685 (SC)

⁷ (2005) 5 SCC 294

⁸ (2012) 10 SCC 561

⁹ Laws APH 2016-11-74

¹⁰ (2010) SCC online Gau 586



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.5490 of 2018

ORDER :

The petitioners Prudviraj Ankala, Law student of Siddhartha Law College, Vijayawada and Chandan Mishra, employee from Liluah Howrah City, West Bengal are arrayed as A.2 and A.3 in Cr.No.30 of 2018,dt.30.03.2018 of the Station House Officer, Yetapaka Police station within the jurisdiction of learned Judicial Magistrate of First Class, Rampachodavaram, as part of Agency area of East Godavari District in Andhra Pradesh State. As per the First Information Report, A.1 is one Haribhushan, Telangana State Committee Secretary, leader in Maoist Party, besides the petitioners A.2 and A.3 supra are the three accused for the offences punishable u/ section120-B of Indian Penal Code(for short, 'IPC'), Section 8(i)(ii) of Andhra Pradesh Public Security Act(for short, 'the APPS Act'), Sections 5 and 6 of the Explosive Substances Act, Section 25 of the Indian Arms Act (for short, 'the IA Act') and Sections 10, 13 and 20 of the Unlawful Activities (Prevention) Act (for short, 'the UAP Act').

2. The First Information Report registered at 18 hours on 30.03.2018 supra after apprehension of the petitioners-A.2&3 supra at the T-Junction, Pichukulapadu village, Yetapaka police station jurisdiction, within 3kms north near Cherla Bhadrachalam, within East Godavari district, by the complainant-the Sub Divisional Police Officer(for short, 'the SDPO') Chinturu by name Dilip Kiran, was based on their said apprehension and from their disclosure statement covered by the Panchanama. The panchanama speaks that on 30.03.2018 at about 1.00P.M. on credible information the SDPO instructed the Sub Inspector of Police to secure mediators and the mediators attended the office at 1.30p.m. were appraised and they have agreed to act so and therefrom the SDPO, the in charge Inspector of Police, Yetipaka Circle, the Sub Inspector of Police, Yetipaka, Head Constable 2187, PCs 1210, 3797 and

2897 left the police station premises at 2.00p.m. and reached the spot and found two male persons, one of them carrying a bag and on seeing the arrival of police personnel with weapons those two persons tried to escape but were apprehended by the police party and when the SDPO one after the other separately questioned both of them, initially they gave prevaricative replies and later in the separate questioning of said Prudviraj Ankala(A.2), he disclosed his name, residence and that he is a student of 4th year L.L.B in Siddhartha Law college, Vijayawada and his father is working as Senior Section Officer in South Central Railway, Vijayawada and his mother is working as Matron in Railway hospital, Vijayawada, that in the year 2010, he joined in degree course in the Central University, Hyderabad and studied upto 2013, during which time, he was a Member of Telangana Vidyarthi Vedika and having been inspired to Marxism and of the Lenin revolutionary ideology, later decided to join in Maoists due to the incidents taken place in the University such as suicide of Vemula Rohith in Central University, Hyderabad and antagonism against Vice Chancellor by name Appa Rao. In the month of March, 2013, he met with one Sukhadev, Dala Commander at Cherla area through one person and moved with him in Maoist Dalam for two months at Telangana area during which time, he met with one Pulluri Prasada Rao @ Chandranna. After some time from Chandranna's wife Mothibai was suffering from ill-health, he was entrusted with the responsibility to get her treated. While he was taking Mothibai to Khammam for treatment, in their way, the Palvantha Rural police arrested him and sent to the Central Jail, Warangal, vide Cr.No. 89/ 2013 U/ sections 10, 13 and 20 of UAP Act, Section 27 I.A Act and Section 8(i)(ii) of APPS Act. After released on bail, he joined in L.L.B., in the Siddhartha Law College, Vijayawada, he wrote a book in the name of Marxist philosophy and cause published the book in the year 2016 and went to the Central University to distribute the books to his friends and there A.3-Chandan Kumar Mishra was acquainted to him who is also with Marxism

ideology that lead to their friendship. He (A.2) also met Haribhushan(A.1), Maoist Telangana State Committee Secretary at Cherla area through one of the members of the Telagana Vidhya Vedhika and at the same time also met Pulluri Prasadarao @Chandranna supra, who requested him to join students in to the Maoist party and he(A.2) informed the same to Chandan Kumar Mishra (A3) who also agreed to join in the Maoist party. It was while so, in the month of January, 2018, he(A.2) along with Mishra-A3 met the Secretary, Maoist Party Telangana State Committee, in the forest area situated between Cherla and Venkatapuram through a Maoist courier. Haribhushan(A.1), explained to them about the principles, terms and conditions and also their revolutionary ideology and instructed them to join more students in the Maoist party and also discussed the issue of suicide of Vemula Rohith in Central University, Hyderabad and after developments and their plan and the probabilities to murder the Vice Chancellor-Appa Rao by the Maoist party and they hatched a plan therefrom to kill the Vice Chancellor at appropriate time. While so, on 30-03-2018 on receipt of call from Haribhushan(A.1), the A.2 and A.3 went to the forest area between Cherla and Venkatapuram and met Haribhushan(A.1) and discussed that it is the better time to kill the Vice Chancellor-Appa Rao and handed over some letter heads belonging to Maoists with instructions to drop them after murder and Haribhushan(A.1), gave them one country made weapon (Tapancha) and explosive substances of five gelatin sticks and five detonators with fuse wire to blast there if any raids take place. It is on the instructions of Haribhushan(A.1), while they were waiting there to go to Hyderabad, to implement their plan and conspiracy to murder the Vice Chancellor-Appa Rao, meanwhile they are caught hold of by the police. A.2 also disclosed about his carrying at his waist said country made Tapancha given to him by Haribhushan(A.1) supra to murder the Vice Chancellor-Appa Rao, same is seized under the cover of the mediators report containing the disclosure and seizure.

3. Even the A.3-Chandan Mishra on questioning him separately made the disclosure in same lines of A2 supra and that his bag contains gelatin sticks, detonators of explosive substances, pamphlets and books, letters relating to CPM Maoist party and from that disclosure, having found 5 detonators, 5 gelatin sticks, one Karl Marx Capital book, one book of Marxism Ajeyam written by the A.2-Prudvi Raj Ankala, Viplava Rachaitala Sangham, Krishna District Unit, and dedicated to Comrade Nagesh; one book with letters as Joharlu to Comrade Pawoof and Comrade Susheelroy; one book with Telugu script as note to 26th Mahasabhalaku Brahmaneeya Hindu Fascism; Phani, virasam letters; one monthly edition of Arunatara Sahitya, Sanskrutika Masapatrika Arunatara Sahitya Samshchutika; a book with script of 'Mahila gontuka matruka pragathiseela mahila sangham(POW) official monthly edition; Praja vimochana peeditha prajala rajakeeya pan patrika" same are seized under the cover of mediators report containing the disclosure and seizure. It was based on their respective disclosures individually and after following the procedure, arrested them including as per the guidelines of the Apex Court at 5.00 P.M. and brought them to Yetipaka Police Station at 6.00 P.M., with the seized property and ammunition and handed over them with the mediators report to the SHO, Yetipaka police station, who is the Sub Inspector of Police that registered the crime supra for the offences supra and submitted therefrom the original First Information Report with mediators report to the JFCM, Rampachodavaram. It is mentioned that the accused persons were handed over to the Sentry PC No.4251 of the police station at 6.30p.m. for there is no locker facility for safe custody and produced on the next day before the JFCM, Rampachodavaram.

4. From the CD in part-I submitted by the Public Prosecutor, it shows the learned JFCM, Rampachodavaram on 31.03.2018 having verified and from copies furnished to the accused and arrest intimated to the family members as can be seen and accused when questioned did not state any ill-treatment

in the hands of police and stated they got means to engage advocate of their choice and from the prima facie accusation for the offences mentioned in the FIR and remand report, taken them to judicial custody and remanded them to the sub jail till 10.04.2018.

5. The contentions of the bail application of the petitioners mainly are that, the entire case of the prosecution referred supra is false and they are innocent and with mala fide intention to harass them and to send an adverse message to the student activists, a false story is concocted and fabricated against them. The so called mediators report, alleged disclosure statements and the averments therein and the alleged place of arrest are all not correct. It is stated that the A.2-Prudviraj Ankala was picked up by muftis on 28.03.2018, at Kesarapalli junction, Gannavaram Mandal, Krishna District when he went to receive A-3 Chandan Mishra, who was also picked up there and a writ of Habeas corpus numbered as W.P.No.10770/2018, was filed by Dharmaraj, father of A.2-Prudviraj Ankala before the High Court on 31.03.2018, by moving a house motion and after that the petitioners are produced on that day before the JFCM supra. The further submission of the Counsel for the petitioners in the bail application besides above contentions from the bail application averments are that, 1st petitioner-Prudviraj Ankala(A.2) is a law student, pursuing his B.A, LL.B at S.V.D. Siddhartha Law College, Vijayawada and paid examination fee on 27.03.2018 to appear for the examinations in April and he is committed to complete his academics with no intention of joining in any banned organizations, but was picked out on the very next day by the Police and said examination application and fee receipt is also filed in support of that and the earlier crime pending against him with Palvancha police is also a false implication and he never indulged in any criminal activities.

6. So far as A.3-Chandan Mishra is concerned, the contention is that he does not have any past criminal record and while he was a student at Hyderabad Central University he was associated with the Student Federation of India (SFI) which is committed to parliamentary democracy and he belongs to the student wing of CPM-a National Party, therefore it is wrong to associate A.3 with the Left wing extremists.

7. The further contention is that the allegations that they hatched a plan to eliminate the Vice-Chancellor is a false story cooked up to show arrest in order to cover up their illegal detention after knowing about filing of the writ petition and there was no any meeting between them with said Haribhushan(A.1) and this angle is given to the case only to incriminate the petitioners and to portray them as hardliners to see that there will be no support to raise voice for the petitioners with the wrong propaganda including through media and to serve their dual purpose, one is to malign the innocent students of Hyderabad Central University who are carrying out a democratic struggle against their Vice Chancellor who is known to have discriminated dalit students which led to the suicide of a meritorious student by name Rohith Vemula and on the other hand by registering a false complaint against the petitioners and wanting to send a message to student activists not to raise their voice against the university administration or any form of oppression from the authorities. When the very arrest of the petitioners is in question and the day and place of arrest is proved to be false, no subsequent charges arising out of any such arrest can be sustained for prosecuting the accused and none of the offences are attracted against them and they are not Members of any banned organization, moreover possessing left wing literature is even no proof of having membership in a banned organizations as such books are legal and readily available in the market and thereby sought for enlarging them on bail.

8. The bail application is opposed by the respondent-State through Public Prosecutor by referring to the Counter filed by the SDPO, Cherla Sub Division, by reiterating the panchanama and the First Information Report averments that for the case of criminal conspiracy and possession of countrymade weapon along with explosive substances and wall posters and literature relating to the banned CPI Maoists, the crime supra was registered for the offences supra, which was based on receipt of a credible information about the movements of Maoists, when proceeded to the spot, found the petitioners there and apprehended as mentioned in the panchanama while they were trying to skulk away on seeing them and from their respective disclosures arrested them by seizure of the property referred supra in the mediators report from said disclosures lead to discovery of the facts relating to the crime and conspiracy by explaining them of the offences constituted therefrom and by compliance with the legal formalities and handed over at the police station and on the next day produced before the learned Magistrate concerned with mediators report, First Information Report and the progress of investigation through memo dated 03.04.2018 and the police custody of the petitioners/ A.2 and A.3 was permitted on 09.04.2018 in CrI.M.P.No.955/ 2018, for two days i.e., on 09.04.2018 and 10.04.2018 and in the course of that when enquired they also stated further facts that are recorded under cover of another mediatorsnama and later handed over at the Central Prison, that the investigation is in progress and yet to be completed for the need to secure other evidence and also to identify other persons, if any involved in this case and A1 is in abscondence and his whereabouts are to be traced and there is a prima facie accusation of the offences punishable under Chapters IV and VI of the UAP Act and Section 43D(5) of the UAP Act, 1967 which mandates that once there is a prima facie accusation, the petitioners are not entitled to bail and in view of the bar, the question of granting bail to the petitioners do not arise leave apart there is every possibility of their abscondence and have

acquaintance with the further unsocial elements and difficult to secure them. Apart from that the A.2 is involved in another Or.No.89 of 2013 of Palvancha Rural Police Station for the offences punishable u/ section 10, 13 and 20 of UAP Act, Section 27 of the IA Act, and Section 8(i)(ii) of APPS Act, for which he was arrested and released on bail and that case is also under investigation and the A.3 Chandan Mishra belongs to West Bengal and in view of the prima facie accusation against them, there is every possibility of their fleeing away and difficult to secure their presence once enlarged on bail. It is also contended of not a case to grant any concession of bail from their involvement in the serious and heinous crime having conspired to eliminate the Vice Chancellor and to attract innocent students towards unsocial activities and use of explosives and weapons to disturb public order and tranquility and peace to their maoistic identity and thereby sought for dismissal of the bail petition.

9. The bail application was originally came for hearing before another (Vacation Judge) Bench of this Court on 10.05.2018 and later on 17.05.2018, it is posted after summer vacation, in the roaster, after summer vacation, the matter was listed on 05.06.2018 and at request of the Addl. Public Prosecutor posted to 07.06.2018 and again having heard in part posted for continuation to 12.06.2018 and for further continuation of arguments posted to this day i.e. 14.06.2018. It is while so, the learned Public Prosecutor in the course of further hearing on 14.06.2018 has submitted that a memo was filed before the learned Magistrate in the above crime by addition of Sections 18, 38 and 39 of the UAP Act a day before.

10. Heard both sides at length on different days referred supra and perused the entire material and also the provisions and propositions and the earlier bail dismissal order passed by the learned V Addl. District and Sessions Judge, Rajahmahendravaram in CrI.M.P.No.423 of 2018, dt.20.04.2018 with observation that from the prima facie accusation and graveness of the offence and the stage of investigation which is at threshold and only a few number of

witnesses i.e. 6 witnesses were examined and considering these facts the petitioners are not entitled to any concession of bail.

11. The further arguments of the learned counsel for the petitioners while reiterating the facts supra are that it is reflecting from the material as a weaved false story against the petitioners with some oblique motive as referred supra, none of the penal provisions are applicable against them, there is no prima facie truth on said accusation covered by the so called panchanama which cannot form a basis to refuse bail as but for that there is no any independent material collected other than showing police witnesses among those so far examined and it is not even a case of any of their cell phones were seized and call data collected and that shown disclosed their movements to corroborate said story, further so called seizure of the countrymade tapancha is with no any bullets(Pallets) to kill as per alleged plan to believe, much less mentioned about Tapancha loaded with bullets or without bullets, the version of A.1 handed over said tapancha stating possessed to use in killing the Vice Chancellor as part of their nefarious plan is also hardly believable.

12. The learned counsel for the petitioners also drawn attention of the Court towards the offences mentioned and particularly that Section 20 of the UAP Act no way attracts that is covered by the Chapter IV of the Act among Sections 15 to 23 for what it speaks of '*any person who is a member of terrorist gang or terrorist organization, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine*' and there is nothing to show involved in Terrorists Act nor shown as members of terrorist gang or terrorist organization.

13. In the reply the learned Public Prosecutor referring to the counter averments and the first schedule item No.34 of the Act and the definition of

terrorists Organization in Section 2(1)(m) of the Act which mentioned the communist party of India(Maoist) of its formation and friend organizations are as terrorist organizations listed in the schedule or an organization operating under the same name as an organization so listed.

14. Coming to the further submission of the learned counsel for the petitioner that purposefully from Section 20 of the Act application is bleak, sections 18 of Chapter IV and 38 and 39 of Chapter VI of the Act are added by a memo yesterday or day before yesterday by filing before the JFCM to oppose the present bail application by the learned Public Prosecutor, to bring if possible within the mischief of Section 43-D Sub Section 5 and 6 proviso bar for saying as if there is a prima facie accusation with truth of it to disentitle to the concession of bail and to keep them in detention for any longer period if possible and thereby no credence can be attached to the adding of Sections 18, 38 and 39 of the Act.

15. In fact, Section 18 which speaks of the punishment for conspiracy etc., that *'whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs, or knowingly facilitate the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine'*. In fact, even in the original FIR pursuant to the disclosure, seizure and arrest panchanama, Section 120-B IPC is mentioned which shows a part of nefarious plan and conspiracy to eliminate the Vice Chancellor. Once there is a conspiracy or privy and becoming a member of it, it is enough u/ sec.120-B IPC where the conspiracy is to kill a person, it is for a grave offence and once such is the case and even it attracts Section 18 of the UAP Act and thus the mere factum of earlier non-mention and subsequent mention of Section 18 by filing a memo makes no difference, leave about the police in the course of investigation may add or alter or delete any section of law or any accusation

based on further verification of existing facts or further collection of additional facts from the progress in investigation, leave about any mistaken earlier non-mention for subsequent proper mention in the investigation prerogative for nothing to show such mention is a malafide outcome without basis, but for to consider whether applies or not. Even coming to sections 38 and 39 of the UAP Act, these read as follows:-

Section 38 - Offence Relating to Membership of a Terrorist Organization

(1) A person, who associates himself, or professes to be associated, with a terrorist organization with intention to further its activities, commits an offence relating to membership of a terrorist organization:

Provided that this sub-section shall not apply where the person charged is able to prove--

(a) that the organization was not declared as a terrorist organization at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the Organization at any time during its inclusion in the Schedule as a terrorist Organization.

(2) A person, who commits the offence relating to membership of a terrorist organization under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

Section 39 - Offence Relating to Support Given to a Terrorist Organization

(1) A person commits the offence relating to support given to a terrorist organization,-

(a) who, with intention to further the activity of a terrorist organization,-

(i) invites support for the terrorist organization, and

(ii) the support is not or is not restricted to provide money or other property within the meaning of section 40; or

(b) who, with intention to further the activity of a terrorist Organization, arranges, manages or assists in arranging or managing a meeting which he knows is-

(i) to support the terrorist organization, or

(ii) to further the activity of the terrorist organization, or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist organization; or

(c) who, with intention to further the activity of a terrorist Organization, addresses a meeting for the purpose of encouraging support for the terrorist organization or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organization under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

16. The Terrorist organization is defined in Section 2(M) of the Act supra and the activity is covered by Schedule-1 item No.34 referred supra and the Sections speak of what kind of person is punishable and the proviso speaks non-application where a person charged is able to prove that the Organization was not declared as terrorists organization at the time when he became a member or began to profess to be a member and that he not taken by the activities of Organization and Sub Section 2 speaks the punishment of a person who commits offence.

17. Coming to Section 10, it speaks on Penalty for being member of an unlawful association, etc., that —

Where an association is declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section,—

(a) a person, who—

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,—

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.]

18. So far as Section 13 of the UAP Act concerned, the punishment is upto 7 years and with fine which speaks as:

“Punishment for unlawful activities:-

(1) Whoever—

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefore carried on by any person authorised in this behalf by the Government of India.

19. For that coming to the following section and sub-sections of the UAP

Act reads as follows:-

(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India ; or

(iii) which causes or is intended to cause disaffection against India;

(p) "unlawful association" means any association,-

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153A(45 of 1860) or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir;

(q) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

20. The learned counsel for the petitioners placed reliance in seeking the concession of the bail in favour of the petitioners, on the expressions of

Arup Bhuyan Vs. State of Assam¹, in which the case registered was under Section 15 of the TADA Act, on 28.11.1987 wherein the confession to a police officer was held admissible u/ sec.15 of the TADA Act, though inadmissible u/ sec. 25 of the Indian Evidence Act, and it is observed in that context that from Section 3 of the Act mere membership of a banned organization will not make a person a criminal unless he resorts to violence and incites people to violence and creates public disorder or disturbance of public peace by resort to violence and it is observed that the confession though admissible u/ sec.15, the Courts have to be cautious in accepting those made to police by alleged accused and not safe to rely as basis in the absence of corroborative material. It is in setting aside the conviction judgment of the designated Court against the appellant/ accused, said observations were made which was after full-dressed trial of the case; where referred in that context another expression in State of Kerala Vs. Raneef² that referred the US Supreme Court decision in Elfbrandt Vs. Russell³ which has rejected the doctrine of 'guilt by association' saying mere membership of a banned organization will not incriminate a person unless he resorts to any activity therein and the Constitution Bench in Kedar Nath Vs. State of Bihar⁴ para-26 also referred in this context and also referred another US expression in Clarence Brandenburg Vs. State of Ohio⁵ (paras—12 and 13) that mere advocacy or teaching the duty, necessity or propriety of violence as means of accomplishing political or industrial reform or publishing or circulating or displaying any book or paper containing such advocacy or justifying the commission of violent acts with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism or to voluntarily assemble with a group formed to teach or advocate the doctrines of criminal

¹ AIR 2011 SC 957

² 2011 (1) Scale 8

³ 384 US 17(1966)

⁴ AIR 1962 SC 955

⁵ 395 U.S.444(1969)

syndicalism, is not *per-se* illegal. It will become illegal only if it incites to imminent lawless action.

21. The case on hand is not under TADA Act. No doubt, it could not be shown the admissibility of confession under the UAPA Act like u/ sec.15 of the TADA Act; however the fact remains that it is only a bail application under consideration and not conducting of trial for consideration from any material on record by evidence let in. Here as held by the recent 3JB expression of the Apex Court in Rohit Tandon Vs. Enforcement Directorate⁶ as to the considerations and parameters for grant or refusal of bail u/ sec.439 CrPC by the High Court where there are no attracting of limitations like in Section 437 CrPC, however what is observed at para-18 is that the consistent view taken by the Court is that economic offences having deep-rooted conspiracies and involving huge loss to the public funds need to be viewed seriously and considered as grave offences since affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country and when attempt is made to project the proceeds of crime as untainted money. It was also held that the allegations may not ultimately be established but having been made the burden of proof that the monies were not the proceeds of crime and were not therefore tainted shifts on the accused persons under Section 24 of the Act of 2002. It is also observed referring to Section 45 of the Act at para-19 with similar provisions covered by Maharashtra Control of Organised Crime Act, 1999, as held by the Apex Court in Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra⁷ and State of Maharashtra Vs. Vishwanath Maranna Shetty⁸, that the Court is not required to record a positive finding that the accused has not committed an offence under the Act in considering the bail application, but for to consider the question in the angle of whether the accused is possessing the requisite

⁶ 2018 (1) ALD (CrI.)685 (SC)

⁷ (2005) 5 SCC 294

⁸ (2012) 10 SCC 561

mensrea and the Court ought to maintain a delicate balance between judgment of acquittal or conviction and an order granting bail much before commencement of trial, from the investigation material. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive from the material a finding on broad probabilities. It is also observed at para-24 that the accused must be in a position to persuade the Court that the allegations in the complaint and materials on record taken at its face value do not constitute the offence with which the accusation is made in consideration of the bail application for consideration.

22. No doubt, it is one of the submissions by the learned counsel for the petitioners that there was Habeas Corpus Writ Petition No.10770/ 18 in the High Court moved by father of A.2 on 31.02.2018 before the Division Bench of this Court and it is thereby on that date the accused were produced with remand report before the learned Magistrate, Rampachodavaram.

23. In fact, it is not arisen with a mere remand report but also covered by the disclosure and seizure panchanama of the accused and the so called weapons and ammunition referred *supra* seized and also the printed material in the form of books or other material connected to the so called activity of the banned organization and from the disclosures of several facts and the panchanama running in several pages and *prima facie* it is difficult to say only for nothing and from mere filing of the Habeas Corpus WP with notice to the Public Prosecutor on intimation from their alleged unlawful detention, the panchanama created suddenly and the crime registered suddenly on 31.03.2018 and produced before the learned Magistrate in haste. Anyhow it is not with such evidence for appreciation of such defence version with preponderance of probabilities in appreciating the prosecution proved its case or not from evidence on record but for the bail application and thereby what is required is from the prosecution material to arrive only a attentive observation with no need of giving a finding on ultimate merits in order to

consider whether is it sufficient by filing of Habeas Corpus petition to throw away the entire prosecution case, equally from the contention of the Tapancha stated seized and no bullets shown seized and nothing mentioned as to Tapancha contained any bullets loaded in it or not. It is also thus premature to go into that, for nothing mentioned as Tapancha is an empty one. Leave about from possessing of Tapancha itself the unaccounted if at all possessed from prima facie saying possessing that too without a license and for not a case of having license. However, the A.3 is an employee of West Bengal and his presence in the state of Andhra Pradesh not accounted for to believe any version of he was when with A2 enticed by mufti police from near Gannavaram of Vijayawada. It is not his case that he was picked up from West Bengal. It is not even a case in which train he has traveled and with what ticket and at which bogie of any train, for otherwise not involved in any previous case or activity with any banned organization or entity from the prosecution material other than mentioned in panchanama of so called disclosure of the conspiracy with A1 and A2. Once he himself from bail application averments and arguments through advocate submits that he came to meet A.2 at Vijayawada and when they were coming from the railway station to the house of A.2 at Kesarapalli, Gannavaram Mandal, the police allegedly apprehended on 28.03.2018, no record relevant as referred supra submitted much less with better and material particulars required to consider from facts in his exclusive knowledge, as there is no any record submitted as to any search warrant petition filed or any notice given to the police or at least e-mail message given to police immediately on 28.03.2018 or at least on 29.03.2018 much less on 30.03.2018 but for the filing of the Writ Petition on house motion on 31.05.2018; even the case of the police is positive that they apprehended on 30.05.2018 in the afternoon at Yetipaka police station jurisdiction as per said panchanama of apprehension, arrest disclosure and seizure referred supra. Once such is the case, even taken for arguments sake

of Section 20 of the UAP Act, not applicable, once Section 18 of the Act r/w 120-B IPC, and Sections 10, 13, 38 and 39 attracts with reference to Section 25 of the IA Act, and Sections 5 and 6 of the ES Act, and once these are serious offences and from the face value of the prosecution material it shows nefarious conspiracy and plan to do away the Vice Chancellor and therefore to create a commotion and law and order problem, the mere agreement and privy to commit an offence, leave about even a preparation is enough from the provisions of the Act besides that of 120-B IPC an agreement is enough; by taking into consideration of all these facts and from the Division Bench expression of this High Court in this regard reiterated in *State Vs. Saddam Hossain*⁹ that a perusal of the order granting bail by the Sessions Court shows failed to know the mandatory requirements of Section 43(D)(5) proviso and there is no record of finding as to whether the accusation against the accused is prima facie true or not and without which the granting bail is unsustainable and thereby, set aside the order by allowing the appeal.

24. Here also by virtue of it on prima facie for nothing to say from the material on record of the accusation is on its face value of prosecution material apparently false but for if at all there is any exaggeration and even Sections 43(D)(5) proviso applies to the case on hand referred supra there is no entitlement to the concession of bail from the perusal of the investigation material, even to A3 from the earlier non involvement of him in any crime like A2. Further the Division Bench of the Gauhati High Court in *Jayant Kumar Ghosh Vs. State of Assam*¹⁰ referring to Section 43(D)(5) of the Act observed that the proviso does not require a positive satisfaction by the Court that the case against the accused is true, but for what is required of mere formation of opinion by the Court on the basis of the material placed before it and formation of opinion cannot however be arbitrary nor based on any surmises

⁹ Laws APH 2016-11-74

¹⁰ (2010) SCC online Gau 586

or conjecture, other than to rest on the material collected against the accused during investigation, leave the fact that there is a general presumption of innocence of accused if logically followed if there are given circumstances, for otherwise grounds for believing that the case against the accused is true and case for arriving a finding of commission of the offence can be made out from said material and when such a case is made out, it would tantamount to saying that reasonable ground exists for opinion that accusation prima facie true and in such a case, the bar imposed by the proviso of Section 45(D)(5) on the Court's power to grant bail got attracted as per paras-78 to 82 of the Judgment. It is also observed by referring to Sections 15, 17 and 20 of the UAP Act from the definition in Section 2(m) of Terrorists organization once listed in the schedule is enough to attract.

25. Accordingly and in the result, the Criminal Petition is dismissed. However the police is directed to complete the investigation at the earliest.

26. Consequently, miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:19.06.2018

Note: L.R Copy to be marked.

b/ o.vvr