IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 488 OF 2018

Konnath Muralidharan ... Applicant

Versus

State of Maharashtra ... Respondent

Mr. Sudeep Pasbola a/w Bhavesh Thakur I/by Susan Abraham for Applicant.
Mr. A. A. Palkar, APP for Respondent – State.

CORAM : NITIN W. SAMBRE, J.
DATE : FEBRUARY 25, 2019.

P.C. :

Central Government in exercise of powers conferred under The Unlawful Activities (Prevention) Act, 1967 *(Herein after shall be referred to as 'the Act')* issued a Notification under Sub-section (m) of Section 2, thereby including in Schedule-1 of the said Act at Serial No. 34 following entry, *"34. Communist Party of India (Maoist) all its formations and front Organisations".*

2. In the backdrop of aforesaid Notification, the present Applicant alleged member of the Communist Party of India (Maoist) came

to be apprehended on 8th May 2015 with following material :-

(a) Literature of banned organisation;

(b) A forged pan card in the name of Thomas Joseph; and

(c) A Merger declaration of Communist Party of India (Maoist) and Communist Party of India (Maoist/Leninist) Naxalbari.

Further search of the house of the Applicant after arrest has resulted into seizure of incriminating material which includes 10 Mobile Instruments with 15 Sim Cards. It is the case of prosecution that the investigation till date revealed the involvement of the Applicant in following offences punishable under Section 10 of the Act i.e. the Applicant being a member of an unlawful Association, as defined under Section 2(o) of the Act, Section 13 which provides for the punishment for unlawful activities, Section 20 - being a member of terrorist gang or organisation, Section 38 - offence relating to membership of a terrorist organisation, Section 39 - supporting the act of terrorist organisation and Section 46 - having been found in possession of a forged pan card.

3. In the aforesaid background, the learned Counsel for

Applicant submits that the nature of evidence available on record, particularly the statements under Section 164 of the Code of Criminal Procedure namely, Ketan Kamat and Samir Sane, incriminating material alleged to have been seized from the custody of the Applicant, the report of handwriting expert thereby identifying the signature of the Applicant on the Merger document at its face value even if be taken as against the Applicant, still no offence is made out under section 20 read with section 15 of the Act.

4. The learned Counsel submits that but for the offence in question there are no criminal antecedents or there is no material on record so as to demonstrate that the Applicant is involved in any of the terrorist activities. Lastly, it is claimed that for last more than 3 ½ years the Applicant is behind the bars and as such is entitled to be released on bail, particularly, keeping in mind his health condition.

5. The learned APP while opposing the claim would urge that the material *referred supra* which is having a high degree of evidential value is sufficient enough to infer prima facie involvement of the

Applicant. Report of handwriting expert, seizure of mobile phones and Sim Cards in categorical terms establishes criminal act of Applicant being a member of banned terrorist organisation. He submits that the Applicant is involved in an unlawful activities as could be inferred from the investigation carried out till date and as such the present Application needs to be rejected.

6. According to the learned APP, the Applicant is provided treatment in the Government Hospital. It is also claimed that it will be difficult to trace the Applicant once he is released. As such the rejection is sought.

7. Having considered and appreciated the submissions made, what is required to be noticed is, the material available on record as could be found in the chargesheet does not speaks of the satisfaction of the ingredients of Section 20 of the Act. It cannot be inferred from the chargesheet that the necessary ingredients of Section 20 to mean that the Applicant has involved himself in a terrorist act can be inferred from the material available on record. Only part of the satisfaction as contemplated

under Section 20 of the Act to mean that the Applicant *prima facie* was found to be the member of the terrorist organiation can be inferred. That *ipso facto* will not take this Court to presume that the Applicant has indulged himself in a terrorist act in absence of convincing material to that effect.

8. The seizure of the other incriminating material, viz – mobile phone, Sim Card which perhaps were investigated has not yield any result to infer the very case of the prosecution of indulgence of the Applicant in a terrorist act being a member of a terrorist organisation.

9. So far as an offence under Sections 38 or 39 of the Act is concerned, same is punishable with ten years of imprisonment. Section 39 *prima facie* speaks of the support given to a terrorist organisation. From the record as observed herein above, even if there is a presumption, once a Notification notifying the terrorist organisation is brought on record, the support by the present Applicant to such an organisation or an offence relating to membership of such terrorist organisation even if for the sake of argument is accepted, the same is punishable to the extent of maximum

ten years. This Court cannot lost sight of the fact that Applicant is behind the bars for last more than 3 ½ years. So far as offence under Sections 10 and 13 are concerned, same are punishable with 2 years and 7 years respectively.

10. In the aforesaid background, considering the fact that there are no criminal antecedents and the Applicant is behind the bars for more than 3 ½ years, in my opinion, a case for grant of bail is made out. Hence, the following order.

ORDER

(A) The Applicant be released on bail in Crime No. 7 of 2015 for an offence punishable under Sections 419, 467, 468, 471 read with Section 34 of the Indian Penal Code and Sections 10, 13, 20, 38 and 39 of the Unlawful Activities (Prevention) Act on executing PR bond of Rs.1.00 Lac with one or more sureties in the like amount.

(B) The Applicant shall neither tamper the evidence of prosecution nor influence the prosecution witnesses.

(C) The Applicant shall furnish his contact numbers, both – mobile and landline and permanent residential address with the

Investigating Officer and the learned Special Court before which the case of the Applicant is pending framing of charge.

(D) The Applicant shall attend the concerned police station, initially for a period of one year once in a fortnight i.e. on every 1st and 16th of each English Calender month and thereafter in first week of each English Calendar Month.

(E) The Applicant shall deposit passport if any, held by him before his actual release, with the Special Court.

11. Criminal Bail Application stands disposed of accordingly.

12. In view of the request made by learned APP, considering seriousness of offence as is claimed by the learned APP, the order of grant of bail needs to be stayed for ten weeks.

13. Though the prayer is opposed by the learned counsel for the applicant, considering the fact that the applicant is behind bar for more than three and half years, present order granting bail in favour of applicant shall remain stayed till 5th May, 2019.

(NITIN W. SAMBRE, J.)