

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22129 of 2020

Arising Out of PS. Case No.-1 Year-2019 Thana- District- Patna

Shariyat Mandal Son of Anarul Haq Mandal Resident of Village - Bajitpur,
Post Gajna, P.S.- Hanskhali, District - Nadiya West Bangal.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Kishore Kunal, Advocate
For the State : Mr.Chandra Bhushan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL ORDER

18 03-03-2022 The applicant/accused in Crime No. 01 of 2019
(Sessions Trial No. 1114 of 2019) registered with ATS Bihar
Police Station for the offences punishable under sections 420,
467, 468 471, 120(B), 34 of the Indian Penal Code, 14 Indian
Foreign Act, 1946 and 18, 38 of Unlawful Activities
(Prevention) Act, 1967, by this application is seeking his
release on bail during the pendency of the trial.

Heard the learned counsel for the applicant. He
submits that the applicant was arrested way back on 27.3.2019
and on 7.5.2019, the investigator had visited his birth place
which is Nandiya, West Bengal and confirmed that the
applicant is an Indian citizen. He submits that this fact is
reflected in paragraph 88 of the case diary (page-536). The
learned counsel further argued that after filing of the charge-



sheet, so far as the present applicant is concerned, charges for the offence punishable under sections 18 and 38 of the Unlawful Activities (Prevention) Act, 1967 are only framed against the present applicant apart from that under section 120(B) of the IPC. It is further argued that there is no iota of evidence to connect the applicant to the crime in question.

As against this, the learned APP submitted that the applicant himself had given a confessional statement before the Police Officer of the ATS which is reflected in paragraph-29 of the case diary and that confession itself shows that the applicant was abetting and advocating the terrorist act. However, the learned APP fairly admits that except the confessional statement of the present applicant made to the Police Officer there is no other evidence to connect the applicant to the crime in question. This Court records the said statement.

Sections 18 and 38 of the Unlawful Activities (Prevention) Act, 1967 reads thus:-

“18-B. Punishment for recruiting of any person or persons for terrorist act.-Whoever recruits or causes to be recruited any person or persons for 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.”

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

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

(a) that the organisation was not declared as a terrorist organisation 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 organisation at any time during its inclusion in the 4[First Schedule] as a terrorist organisation.

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

It is thus clear that apart from actual commission of terrorist act, section 18 of the said act makes even conspiracy, abetment, advocating etc. of the terrorist act or any act preparatory to the commission of terrorist act punishable.



Similarly, membership of a terrorist organisation invites penalty for as prescribed by section 38 of the said Act.

Reverting to the facts of the instant case, the subject FIR was lodged by the Officer of the ATS, Patna on suspicion. Two accused persons namely, Khairool Mandal and Abu Sultan came to be arrested by the police from the railway station of Patna. Their search revealed in recovery of incriminating materials indicating their association with the terrorist activities. The FIR itself reflects that those arrested accused confessed before the police that the present applicant who is residing at Pune is also associated with them. However, when the applicant was arrested on 27.3.2019 from Pune, nothing was recovered from him which may indicate that the applicant is associated with the accused involved in other commission of terrorist act or those who are associated with the terrorist act.

What is sought to be relied by the prosecution, is confessional statement of the present applicant at paragraph-29 of the case diary. Confession made by an accused before the police officer is hit by provision of Sections 24, 25 and 26 of the Evidence Act and it cannot be termed as an admissible evidence.

In the light of foregoing discussion, I am of the



considered opinion that it cannot be said that there are reasonable ground for believing that the accusations against the present applicant are prima facie true. Resultantly, he is entitled for bail considering his long pre-trial detention fro the period from 27.3.2019, hence, the order.

The application is allowed.

The applicant/accused in ATS Bihar P.S. Case No. 01 of 2019 (Sessions Trial No. 1114 of 2019) is directed to be released on bail on executing P.R. Bond of Rs. 50,000/- (Fifty Thousand) on furnishing two sureties of the like amount to the satisfaction of the trial court with the following conditions:-

(I) The applicant/accused should not extend any threat, promise of inducement to the persons acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer.

(II) The applicant/accused should cooperate the trial in expeditious disposal of the trial against him.

(III) the applicant/accused should not contact the members of the prosecuting party as well as witnesses in this case in any manner till conclusion of the trial.

(IV) The applicant should not repeat commission of similar offence in future and if he is found to be involved in



commission of similar offence, the State is at liberty to apply for cancellation of bail granted to the applicant/applicants in the instant case.

The applicant to remove all office objections forthwith and the Registry to issue certified copy of this order only after removal of office objections by the applicant/accused.

(A. M. Badar, J)

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