

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.8265, 8266 & 8267 of 2023 of 2023

COMMON ORDER:

Criminal Petition No.8265 of 2023 is filed by Accused Nos.4 and 5; Criminal Petition No.8266 of 2023 is filed by Accused No.3; and Criminal Petition No.8267 of 2023 is filed by Accused Nos.6 and 7 in Crime No.21 of 2023 on the file of Penchikalpet Police Station. The offences are punishable under Sections 120, 120B of the Indian Penal Code and sections 10, 13, 16, 18, 18(B) of the Un-Lawful Activities (Prevention) Act, 1967 and Sections 4 and 5 of the Explosive Substance Act, 1908.

2. Briefly, the case of the prosecution is that on 28.04.2023, a complaint was lodged by the Circle Inspector of Police, Kagaznagar, stating that on reliable information he along with ASI and Head Constable and Police Constable went to the outskirts of Agarguda Village and apprehended two persons while they were going towards Bejjur on motorcycle, since the persons were acting suspiciously. They were interrogated. Both of them who are arrayed as Accused Nos.1 and 2 confessed being members of CPI Maoist Party since childhood. At the instance of Accused No.1 five Gelatin Sticks, 15 electronic detonators and other documents of the banned Maoist Party were recovered. At the instance of Accused No.2, 5 Gelatin

Sticks, 10 electronic detonators and CPI party documents were recovered. Since both Accused Nos.1 and 2 belong to the banned group of CPI Maoist, they were arrested and produced before the concerned Court.

3. The complaint was registered for the offences under Sections 120, 120b of the Indian Penal Code and sections 10, 13, 16, 18, 18(B) of the Un-Lawful Activities (Prevention) Act, 1967 and Sections 4 and 5 of the Explosive Substance Act, 1908.

4. Learned Counsel appearing for the petitioners would submit that even according to the case of the prosecution, petitioners/A3 to A7 are sympathizers of CPI Maoist party and nothing has been recovered from the petitioners. Petitioners were shown as accused and absconding in the Remand Report of Accused Nos.1 and 2. He further submits that since they have nothing to do with the alleged offences either under Indian Penal code or under Un-Lawful Activities (Prevention) Act, they approached the Sessions Court for relief of Anticipatory Bail. Anticipatory Bail was granted in favour of petitioners/A3 to A7 on 07.06.2023. However, the State preferred CrI.P.Nos.5347, 5383 & 5384 of 2023 for cancellation of Anticipatory Bail granted to Accused Nos.3 to 7.

5. This Court by order dated 13.07.2023, while setting aside the order granting bail to the accused Nos.3 to 7 in CrI.MP.Nos.149, 147 and 148 of 2023, directed the Accused Nos.3 to 7 to surrender before the concerned Court on or before 31.07.2023.

6. Learned Counsel for the petitioners would submit that the petitioners herein/A3 to A7 surrendered before the concerned Court as directed on 28.07.2023. The petitioners are languishing in jail. Accused Nos.1 and 2 were granted regular bail, who are the main offenders in the case according to the prosecution.

7. The learned Public Prosecutor would submit that the State has preferred cancellation of the bail that was granted to Accused nos.1 and 2 vide CrI.P.No.7310 of 2023. For the said reason, the regular bail petitions of the petitioners/A3 to A7 and the bail cancellation petition of the State against A1 & A2 were heard together. Public prosecutor submits that Accused No.3 was earlier involved in other criminal offences. In the statements recorded by the Police, it was stated that A3 and other petitioners also were asking for money to organize 'dharna'. Accordingly, three witnesses even parted with amounts. In the said circumstances, the petitioners/A3 to A7 cannot be granted the relief of bail since allegations are serious in nature.

8. As seen from the Remand Report and case as projected by the learned Public Prosecutor, these petitioners are sympathizers of CPI Maoist Party which is a banned organization. It is not the case that these petitioners/A3 to A7 are members of the said organization. The offences alleged against them are under Sections 10, 13, 16, 18, 18(B) of the Un-lawful Activities (Prevention) Act, 1967.

9. Section 10 is penalty for being member of an un-lawful association. It is not the case that these petitioners were members in any un-lawful association.

10. Section 13 is punishment for un-lawful activities.

11. Unlawful activities is defined under Section 2(o) of the Unlawful Activities (Prevention) Act, 1967, and the same is as under;

“2(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;

12. The act of asking amounts for 'dharna', cannot be said to be falling within the definition of unlawful activity under the Act.

13. Section 16 is punishment for terrorist Act. It is not the case of the police that the petitioners have done any 'act' which falls within the definition of 'Terrorist Act' under section 15.

14. Section 18 is punishment for conspiracy. To attract an offence under Section 18 of the Act, a person should have committed, advocated, abetted or advised commission of a terrorist act or for preparation of any commission of terrorist act, nowhere in the Remand Report or the statements filed by the Public Prosecutor, any such allegation is made.

15. Section 18 B is punishment for recruiting of any person or persons for terrorist act. It is not the case that these petitioners have recruited any persons for any terrorist act.

16. In the said circumstances, the petitioners/A3 to A7 can be granted the relief of regular bail subject to following conditions;

i. the petitioners/A3 to A7 are directed to be released on bail on their executing personal bond for Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties for a like sum each, to the satisfaction of the Judicial First Class Magistrate, Komuram Bheem-Asifabad District at Sirpur.

(ii) The petitioners/A3 to A7 shall appear before the concerned Station House Officer, every day at 10.00 a.m. for a period of four weeks after being released from the jail, for the purpose of investigation.

iii) The petitioners/A3 to A7 shall abide by the other conditions stipulated in Section 437(3) of Cr.P.C.

17. Accordingly, the Criminal Petition is allowed.

18. The police are at liberty to seek cancellation of bail under changed circumstances.

Miscellaneous applications, if any pending in this criminal petition, shall stand closed.

K.SURENDER, J

Date :15.09.2023
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THE HON'BLE SRI JUSTICE K.SURENDER

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Dt.15.09.2023

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