



Judgment

appeal631.23

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPEAL NO. 631/2023.

1.Praful s/o Dewanand Bhat,
Aged about 28 years, Occupation -
Contractual Ambulance Driver,
PHC Kamlapur.
(Accused No.6)

2.Anil s/o Gokuldas Bhat,
Aged about 28 years, Occupation -
Contractual Ambulance Driver,
PHC Kamlapur.
(Accused No.7)

Both residents of Kamlapur,
Taluq Aheri, District Gadchiroli.
(Presently in the Central Jail,
Nagpur.)

... **APPELLANTS.**

VERSUS

The State of Maharashtra,
through Police Station Officer,
Sub Police Station Repanpalli,
District Gadchiroli.

... **RESPONDENT.**

Mr. M.G. Bhangde, Senior Advocate with Shri A.G. Baheti,
Advocate for Appellants.
Mr. J.Y. Ghurde, A.P.P. for Respondent/State.

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**CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.**

DATE : JANUARY 12, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

Admit. By consent of the learned Counsel present for the parties, the appeal is taken up for final disposal.

2. By this appeal filed under Section 21[4] of the National Investigation Agency Act, 2008, appellants/accused nos. 6 and 7 have called in question the impugned order dated 09.06.2023 passed in Criminal Application No.16/2023 by the learned Additional Sessions Judge, Gadchiroli by which the application for grant of bail (Exh.4) came to be rejected.

3. Both appellants have been arrested on 28.07.2022 for the offence punishable under Section 120[B] read with Section 34 of the Indian Penal Code and Sections 10, 13, 18, 20 and 39 of the

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Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as **“the UAP Act”** for short). After facing police custody, appellants have been remanded to judicial custody. The investigation is completed and charge sheet has been filed. Appellants [Praful and Anil] have applied to the trial Court for grant of bail, however, the trial Court declined to exercise the discretion by expressing that a prima facie case is made out for invoking the provisions of UAP Act. While considering the claim of appellants for grant of bail, the trial Court has also considered the rigor of Section 43(D)(5) of the UAP Act, and ultimately declined to grant bail.

4. The learned Senior Counsel appearing on behalf of appellants while claiming bail seriously criticized the impugned order by stating that the observations made by the trial Court in paragraph no.9 of the order are factually incorrect. He would submit that there exists no material, nor there are reasonable grounds for believing that the accusation against appellants are prima facie made out. It is emphasized that the main allegations are against co-accused Pawankumar, from whom the incriminating material has been seized. Though mobile handset of appellants came to be

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seized, however, no incriminating material was traced. There is no disclosure at the hands of appellants. The disclosure statement of co-accused Pawankumar made under Section 27 of the Evidence Act is not admissible as regards to appellants. In substance, he would submit that the existing material is bereft to form an opinion about existence of reasonable ground to believe the accusation and thus, the statutory embargo would not apply.

5. The learned A.P.P. appearing on behalf of the respondent State while defending the impugned order took us through the oral report lodged by the informant on 28.07.2023. It has been submitted that appellants had accompanied the main accused from whom the incriminating material has been seized. Our attention has been invited to the statements of Dr.Santosh Naitam and Santosh Tatikondawar to establish the link of appellants. Moreover, we have been taken through the disclosure statement of co-accused Pawankumar bearing reference about the act of appellants.

6. It is prosecution case that while police were conducting anti naxal operation they found the activities of appellants and co-

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accused of suspicious nature. The police apprehended all three and took personal search. During search naxal banners and pamphlets were found, and therefore, the crime has been registered. During investigation some more accused have been arrested. The first limb of the prosecution rather is about seizure of incriminating material. It is also prosecution case that during house search of both appellants, two mobile handsets were seized which were concealed. The defence counsel took us through both seizure panchnama indicating that at the time of search the mobile phones were lying nearby. Moreover, it is submitted that mobile handsets were even not sent to forensic science laboratory. The learned A.P.P. conceded the position that nothing incriminating was found from the seized mobile handsets. Thus, the prosecution is unable to collect any material from said quarter.

7. The learned Senior Counsel for appellants has drawn our attention to the seizure memo [page no.156], disclosing that the incriminating material has been seized particularly from the possession of the co-accused Pawankumar. The learned A.P.P. is unable to point out any other material so as to make out a case of

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seizure from the possession of appellants. We have examined the statement of Dr.Santosh Naitam. He has stated that the co-accused Pawankumar used to supply medicines to the naxalists who are members of banner organization i.e. Communist Party of India (MOIST). He stated that some time while supplying medicines, Pawankumar was using the ambulance which was driven by both appellants, who are drivers. Another statement of Santosh Tatikondawar shows that the co-accused Pawankumar was supplying medicines and some time they were supplied through ambulance driver Bhat. Besides that nothing is pointed out by the learned A.P.P. as regards to the role of appellants. Main accused Pawankumar Uikey was employed in Primary Health Centre, Kamlapur. Both appellants are drivers appointed on contract basis on the ambulance. Having regard to the said fact mere association with Pawankumar cannot be construed as an association with the members of terrorists organization. Prima facie it is to be established that their association was with an intention to further the terrorist activities. The learned A.P.P. took us through the disclosure statement of co-accused Pawankumar to contend about the role of appellants.

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However, we are unable to consider the same as an incriminating material due to statutory bar created under Section 25 of the Evidence Act.

8. The learned Senior Counsel for appellants has relied on the decisions of Supreme Court in cases of (1) **Sudesh Kedia .vrs. Union of India – [2021] 4 SCC 702**, (2) **Vernon .vrs. The State of Maharashtra – 2023 [10] Scale 312** and (3) **Yedala Subba Rao and another .vrs. Union of India – [2023] 6 SCC 65** to contend that in absence of prima facie material the embargo on grant of bail under provisions of Section 43[D][5] will not apply. Though it is contended that appellants are members of a terrorist gang or organization, the prosecution is unable to point out any material to that extent. There is no evidence to show that either appellants possessed any material or had any association with the terrorist organization. We have carefully examined the entire material relied by the prosecution, as well as the record. Even if accepting the material against appellants, it is not possible to form an opinion that there are reasonable ground for believing that the accusation made against appellants to constitute the offence under UAP Act are prima

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facie true. In consequence, the statutory fetter imposed under Section 43[D][5] would not apply. In the result, the impugned order needs to be quashed and set aside. We deem it appropriate that the trial Court would be in a better position to suitably impose the conditions for grant of bail considering the facts and circumstances. In view of that, we pass the following order.

ORDER

- (i) Criminal Appeal is allowed and disposed of.
- (ii) The impugned order dated 09.06.2023 passed below Exh. 4 in Criminal Application No.16/2023 by the learned Additional Sessions Judge, Gadchiroli is hereby quashed and set aside.
- (iii) The trial Court is directed to forthwith pass appropriate order of bail by imposing suitable conditions which it deems fit.

JUDGE

JUDGE