

K.K. Thasleem Vs. State of Kerala represented by the Public Prosecutor and Another

K.K. Thasleem Vs. State of Kerala represented by the Public Prosecutor and Another

SooperKanoon Citation : sooperkanoon.com/1181473

Court : Kerala

Decided On : Jan-15-2016

Judge : K.T. Sankaran & K.P. Jyothindranath

Appeal No. : CRL. A. No. 1331 of 2015 (D)

Appellant : K.K. Thasleem

Respondent : State of Kerala represented by the Public Prosecutor and Another

Judgement :

K.T. Sankaran, J.

1. Terrorism is one of the main threats to the safety and security of India and the people of India. The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967) was enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith. The Act was amended in 2004 and the words and for dealing with terrorist activities were inserted in the preamble. The Act was amended in 2008 and 2013 as well. In order to effectively combat terrorism, certain stringent provisions have been incorporated in the Act. One among these provisions is subsection (5) of Section 43-D of the Act, which provides that notwithstanding anything contained in the Code of Criminal Procedure, no person

accused of an offence punishable under Chapters IV and VI of the Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release. The proviso to sub-section (5) of Section 43-D states that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under Section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true. In the light of the proviso to sub-section (5) of Section 43-D, the Courts are bound to peruse the materials on record and arrive at a satisfaction as to whether there are reasonable grounds for believing that the accusation made against the accused is prima facie true. It is not necessary for the Courts to arrive at any final conclusion and it is only sufficient that the Courts believe the accusation against the accused to be true. If the Court is of the opinion that there are reasonable grounds for believing that the accusation against the accused is prima facie true, the Court is bound to refuse bail to the said accused. The Courts are not expected to deal with the bail applications in a routine manner in respect of the offences under Chapters IV and VI of the Act and grant bail in a casual manner. The Courts owe a duty to strengthen the efforts made by the nation to combat terrorism for the purpose of ensuring the safety and security of the people and safety of the nation as such.

2. In the present case, one Shahanas (second accused) was taken into custody by the police from Ernakulam North Railway Station on getting secret information that he has been indulging in anti-social activities and terrorist activities. On examining the contents of the bag belonging to Shahanas, the police found certain letters allegedly written by Thadiyantevida Nazeer, the prime accused in the Bangalore bomb blast cases, to Shahanas. Certain SIM cards and mobile phones were also found in the bag belonging to Shahanas. It is alleged that Shahanas made a disclosure statement that he used to meet Thadiyantevida Nazeer at the jail in Bangalore and used to get instructions in the matter of implementing certain ideas evolved by Thadiyantevida Nazeer. On the basis of the materials collected during investigation, the appellant (Thasleem K.K.) was taken into custody by the police from Kannur. The appellant was produced before the Court of the Additional Chief Judicial Magistrate, Ernakulam on 20.11.2015. The investigating agency made a

prayer for police custody and the Court granted custody of the appellant to the police for the period upto 24.11.2015.

3. The appellant filed Bail Application, namely, Crl.M.P.No.1380 of 2015 before the Court of the Additional Chief Judicial Magistrate, Ernakulam. That application was dismissed. He preferred Crl.M.C.No.2472 of 2015 before the Sessions Court, Ernakulam, which was dismissed as per the order dated 10.12.2015. The present appeal is filed challenging the order dated 10.12.2015 passed by the Sessions Court.

4. It has come out that Sherafudeen, the brother of the appellant, is one of the accused in the Bangalore bomb blast cases. In the present case, the first accused is none other than Thadiyantevida Nazeer.

5. The prosecution alleged that Thadiyantevida Nazeer instructed Shahanas (second accused) to meet some of the witnesses in Bangalore bomb blast cases and to influence them to depose in favour of the accused. During investigation, it was revealed that one of the witnesses in the Bangalore bomb blast cases was even threatened with dire consequences by the appellant, if the witness were to support the prosecution. The case diary would reveal that Thadiyantevida Nazeer instructed Shahanas to engage the appellant to meet the witnesses and to influence them. Some of the witnesses belong to Kannur and the appellant also belongs to Kannur. The case diary would also reveal that the modus operandi was to collect all the details and family history of the witnesses and to disclose the same to the witnesses during talk so that they get terrorised. The witnesses would be made known that the appellant and his associates know about all the details and movements of the witnesses, their family members and relatives. It is alleged that the witnesses were also given the impression that the appellant and others would not hesitate to stringently deal with the witnesses and their relatives in case the witnesses were to depose against Thadiyantevida Nazeer and other accused. The letters of Thadiyantevida Nazeer contain instructions as to how the witnesses should depose and if in the chief examination the witnesses were to depose in favour of the prosecution, how to correct it when they depose while being cross examined. The instructions of Thadiyantevida Nazeer include that Advocates at

Bangalore would be made available for the help of the witnesses. Each and every minute detail as to how the operation of influencing the witnesses should be carried out and who should be entrusted with the duty, was charted out by Thadiyantevida Nazeer.

6. The offences alleged against the appellant and the other accused in the present case are under Sections 120B and 109 of the Indian Penal Code and Sections 22 and 39 of the Unlawful Activities (Prevention) Act. Section 22 of the UAP Act occurs in Chapter IV while Section 39 is in Chapter VI. Section 22 reads as follows:

22. Punishment for threatening witness.--

Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

7. The court below thought that there is no material to find that the appellant had threatened any of the witnesses in the Bangalore bomb blast cases with violence and it is doubtful whether the offence punishable under Section 22 of the Act would be attracted in the facts of the present case. As stated earlier, we have carefully perused the case diary. On facts, the court below was not right in holding that there is no material to find that the appellant had threatened any of the witnesses. On the other hand, the materials on record would show that one of the witnesses stated before Court at Bangalore dealing with Bangalore bomb blast cases that he was threatened by the appellant on the instructions from Thadiyantevida Nazeer. That witness even filed a petition before the police at Bangalore stating that he was threatened and intimidated in order to speak in favour of Thadiyantevida Nazeer. Section 22 of the UAP Act would apply whenever a witness or any other person in whom such witness may be interested is threatened with violence or is wrongfully restrained or confined or if any other unlawful act is done with the intent to cause any of the acts mentioned in Section

22. The materials on record, prima facie, would show that the ingredients of Section 22 are attracted in this case.

8. The court below found that at this stage of the investigation of the case it cannot be found that the allegations against the appellant would not amount to inviting support for the member of a terrorist organisation with the intention to further the activity of such organisation. The court below was referring to these allegations with reference to the applicability of Section 39 of the UAP Act. The court below found that the letters seized from the possession of the second accused (Shahanas) which were alleged to have been written by Thadiyantevida Nazeer, would indicate that it was at his instance that the second and the third accused made attempts to persuade the witnesses in the Bangalore bomb blast cases.

9. The learned counsel for the appellant submitted that the finding of the court below is that the allegations against the appellant would amount to inviting support for the member of a terrorist organisation . It is submitted that it would not attract Section 39(1) (a)(i) of the UAP Act. The learned counsel submitted that the expression used in clause (i) is invites support for the terrorist organisation . The counsel submitted that the thrust is on terrorist organisation and not on its members. The learned Director General of Prosecution submitted that support to a member of a terrorist organisation would also amount to support for that terrorist organisation. The learned Director General of Prosecution submitted that a terrorist organisation cannot function without individuals and a support given for an individual member of the terrorist organization for the purpose of the terrorist organisation would also attract Section 39(1)(a)(i) of the UAP Act. We do not think that it is necessary to decide that question at this stage since it would be premature to do so. What the Court intended was that the materials would indicate that Section 39(1)(a)(i) of the UAP Act is attracted.

10. On a perusal of the case diary in the case, we are of the opinion that there are reasonable grounds for believing that the accusation against the appellant is prima facie true. The allegations, if found true, would constitute a very serious offence which would have serious repercussion in the trial of Bangalore bomb blast cases. The investigation is in progress. It is submitted that the investigation of the case

may not be confined to the limits of the State of Kerala. If the appellant is released on bail, it would prejudicially affect the proper and effective investigation of the case as well. The court below considered all the relevant aspects and held that the appellant cannot be released on bail. We are also of the view that the appellant cannot be granted bail not only on the grounds stated by the court below but also on other grounds which we have mentioned in this judgment.

For the aforesaid reasons, the Criminal Appeal is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com