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Jaison C.Cooper Vs. State of Kerala

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Court : Kerala

Decided On : Mar-03-2015

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Jaison C.Cooper

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA TUESDAY, THE3D DAY OF MARCH201512TH PHALGUNA, 1936 Bail Appl..No. 947 of 2015 () ---------- CRIME NO. 113/2015 OF ERNAKULAM TOWN SOUTH POLICE STATION, ERNAKULAM DISTRICT ---------- PETITIONER/ACCUSED (UNDER JUDICIAL CUSTODY) : ---------- JAISON C.COOPER, AGED36YEARS, S/O. CLEATUS, CHAKKALAKKAL HOUSE, ROSE GARDEN LANE, KUMBALANGI (VIA), PALLURUTHY. BY ADVS.SRI.K.S.MADHUSOODANAN SRI.C.S.MANU SRI.M.M.VINOD KUMAR SMT.K.M.RAMYA SRI.P.K.RAKESH KUMAR SRI.K.S.MIZVER RESPONDENT(S)/COMPLAINANT & FORMAL PARTY: ---------- 1. STATE OF KERALA TO BE REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INPSECTOR OF POLICE, ERNAKULAM TOWN SOUTH POLICE STATION, PIN-682 016 BY DIRECTOR GENERAL OF PROSECUTION SRI.ASIF ALI.T. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON0303-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts B. KEMAL PASHA, J.

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ORDER

~ ~ ~ ~ ~ ~ Petition filed under Section 439 Cr.P.C.

2. Petitioner is the accused in Crime No.113/2015 of Ernakulam Town South Police Station registered for the offence punishable under Section 13(i)(b) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'the UAPA').

3. The allegation against the petitioner is that he was found keeping pamphlets narrating "armed revolution and violence against Indian constituency", supporting the banned organisation namely, Communist Party of India (Maoist). Even when he was called to the Ernakulam Town BA.947/2015 :

2. : South Police Station on 29.01.2015 in connection with the investigation of crime No.1599/2014 of the Ernakulam Town South Police Station. He was placed under arrest on 30.01.2015 and the pamphlets were seized. It is alleged that the further investigation revealed that he has frequent contacts with one Sreekanth, who is an accused in Crime No.1599/2014 of Ernakulam Town South Police Station as well as Crime No.1467/2014 of the Kasaba Police Station, Palakkad, through his mobile phone as well as Facebook account. It is alleged that he has got close nexus and link with the members of an urban action team of the banned organisation named CPI(Maoist). It has come out that he has close acquaintance with the 'Janakeeya Manushiavakasha Prasthanam', which is proved to be a formation or a front organisation of the CPI(Maoist), which is recognised, identified and scheduled as a terrorist organisation as item No.34 of the First Schedule of

the UAPA. He has been in custody for the period from BA.947/2015 :

3. :

30. 01.2015 onwards.

4. Heard learned counsel for the petitioner Sri.K.S.Madhusoodanan and the learned DGP Sri.Asif Ali.

5. According to the learned counsel for the petitioner, inciting an idea cannot be styled as an offence within the meaning of the provisions of any of the statutes. Further according to the learned counsel for the petitioner, there is absolutely nothing to show that he has advocated, propagated or worked for any such idea relating to any terrorist organisation and, therefore, Section 13 of the UAPA cannot be invited. It is also argued that in the light of the constitutional protections contained in Article 19, unless and until it is shown that there is any act which causes imminent threat or imminent danger to the peaceful life, even if such an idea is propagated, it cannot be said that it is an offence within the meaning of Section 13 of the UAPA. It is also pointed out that by time and again, the Supreme Court has held that unless and until imminent threat is involved or BA.947/2015 :

4. : imminent danger is involved, mere literal interpretation of the provisions contained in Section 13 will violate the fundamental right guaranteed under Article 19 of the Constitution of India.

6. The argument in short is that the investigating officers have not collected any evidence to show any imminent threat or imminent danger to the peaceful life in the country from the part of the petitioner and, therefore, no offence under Section 13 can be invited in the case of the petitioner. The learned counsel for the petitioner has invited the attention of this Court to the decision in State of Kerala Vs. Raneef [(2011) 1 SCC784, wherein it was held by the Supreme Court by relying on Scales Vs. United States that there must be clear proof that the defendant specifically intends to accomplish the aims of the organisation by resorting to violence. It was also held in paragraph 10 of the said decision that merely because an organisation has not been declared as an 'unlawful

association', it cannot be said BA.947/2015 :

5. : that the said organisation could not have indulged in terrorist activities.

7. The learned counsel for the petitioner has invited the attention of this Court to the decision in Indra Das Vs. State of Assam [(2011) 3 SCC380, wherein it was held that the offence under Section 10 of the UAPA which on its plain language make mere membership of a banned organisation as a crime; at the same time, that has to be read down by departing from the literal rule of interpretation in such cases, otherwise the said provision will become unconstitutional as violative of Articles 19 and 21 of the Constitution. Ordinarily, for interpreting a provision or statute, if it is possible to interpret the same in its literal sense, normally that has to be preferred. At the same time, the Supreme Court has held that while interpreting Section 3 (5) of TADA as well as Section 10 of the UAPA, there should be a deviation from the normal rule of literal interpretation, as an interpretation of the said statutory provisions through BA.947/2015 :

6. : literal interpretation would tend to make the said provisions unconstitutional within the meaning of Articles 19 and 21 of the Constitution. It was held in paragraph 41 that, "Had there been no Constitution having fundamental rights in it then of course a plain and literal meaning could be given to Section 3(5) of TADA or Section 10 of the Unlawful Activities (Prevention) Act. But since there is a Constitution in our country providing for democracy and fundamental rights we cannot give these statutory provisions such a meaning as that would make them unconstitutional." 8. Sri.Madhusoodanan has given emphasis to the point by the observation made by Jefferson as "elective despotism was not in the Government we fought for". With utmost vigor and vitality, the learned counsel for the petitioner has pointed out that absolute human rights violation is going on in forests wherein the tribal are the forest dwellers and basic human rights are being denied to them, which clearly have a tendency of severe unrest BA.947/2015 :

7. : among the tribal communities. It is argued that unless and until, ideas are propagated for the protection of basic human rights of such forest dwellers, they cannot have any demonstration of their miseries in public and they cannot come and agitate for the protection of their human rights. The argument in short is that

an association formed for their protection and by lending support for the protection of their basic human rights, cannot be styled as a terrorist organisation.

9. Per contra, Sri.Asif Ali has argued that the association named 'Janakeeya Manushiavakasha Prasthanam' of which the petitioner is an office bearer can clearly be styled as a formation of the Maoist organisation which is banned as item No.34 of the First Schedule of UAPA and it is not only a formation, whereas a front organisation of such a banned terrorist organisation. Not only the CPI(Maoist) is the terrorist organisation identified under item No.34 of the First Schedule of UAPA, whereas BA.947/2015 :

8. : along with it, all its formations and front organisations are also banned. The learned DGP has invited the attention of this Court to some of the contents of the minutes book seized from the premises of the accused in Crime No. 131/2015 of Hill Palace Police Station, which clearly show that it has lent support to the bloodshed as well as violence committed by some of the front organisations or formations of the CPI(Maoist). The said accused and the petitioner have close association each other.

10. Even by becoming a member of such a banned organisation in the name and style as Communist Party of India (Maoist), definitely a person can invite an offence within the meaning of Section 10 of the UAPA. The question as to whether the 'Janakeeya Manushiavakasha Prasthanam', of which the petitioner is one of the office bearers, can be treated as a terrorist organisation within the meaning of item No.34 of the First Schedule of UAPA is the crux of the matter. If an association or organisation is BA.947/2015 :

9. : lending support to the programs of CPI(Maoist) or any of its front organisation or formations, such an organisation or association can also be styled as a formation or a front organisation of the CPI(Maoist). From the Facebook account of the petitioner under the name 'Jaison C.Cooper', it has come out that he has frequent links with the members of the banned organisation and he has swallowed and supported the ideas and works of the said banned organisation. It seems that he has supported the bloodshed and violence being propagated by the banned organisation CPI(Mavoist).

11. The learned DGP has pointed out that during the course of the investigation, the investigating officer could seize many vital materials like pamphlets, etc. which clearly reveal some nexus of the petitioner with the members of the banned organisation which had revolted against Multinationals like, Nitta Jelatin, Kentucky, Mc Donald, etc. It is a fact that the office of Nitta Jelatin at Panampilly Nagar BA.947/2015 :

10. : was smashed and destroyed by the militant group and it seems that the responsibility of the same has been accepted by CPI(Maoist). Similarly, there were revolts against Kentucky and Mc Donald, who are also multinationals, at Palakkad. The revolt has resulted in smashing and destroying the outlets of Kentucky and Mc Donald which has invited the serious concern in the multinational relationship of this country.

12. Of course, it is true that there are human rights violations among the tribal in the forests. At the same time, one cannot have recourse to methods to overawe a democratically elected government or legally formed governmental machinery, even though people are being tempted to have recourse to such things. We cannot white wash the illegal activities which tend to overawe a government or governmental machinery, which are constitutionally installed, through violence. If such thing is white washed, that will tend to disarray the whole BA.947/2015 :

11. : administration of the nation.

13. According to the investigating officer, the continued investigation in the matter is required as incriminating materials are being unearthed presently. It has also been pointed out that the investigation has revealed the connections of the petitioner with the accused who were directly executing the ideas of Maoist organisation by smashing and destroying the office of Nitta Jelatin. Even though confession before the police cannot be taken for any purpose, the investigating machinery can move based on it for continuing with the investigation. It is true that the learned counsel for the petitioner has justified the acts of the petitioner. At the same time, as rightly pointed out by the learned DGP, this Court is of the view that this is a case wherein continued investigation is required as the matter poses severe threat from the part of the terrorist organisation called CPI (Maoist), which

is banned as item No.34 in the First Schedule of UAPA. Every instances of BA.947/2015 :

12. : human rights violations in the country cannot be set right by having recourse to bloodshed or violence. It seems that such organisations or associations by supporting and promoting the activities of the banned organisations like CPI (Maoist), are also landing in troubles by acquiring the status of terrorist organisations by assuming the status of formations or front organisations of CPI(Maoist). Things cannot be set at right by having recourse to bloodshed or violence. There is nothing wrong in reacting through lawful means or in a democratic way.

14. At this stage, if the petitioner is enlarged on bail, definitely, it will hamper the smooth investigation of the case. It is true that the continued incarceration is tiresome and painful; but, at the same time, it cannot be said that it is cruel when it is required for the continued investigation of the case.

15. The contents of the CD, prima facie, reveal the complicity of the petitioner. The matter has to be thoroughly BA.947/2015 :

13. : investigated. Considering the seriousness of the allegations against the petitioner and the present stage of the investigation, I am of the view that it is premature to consider the enlargement of the petitioner on bail at this stage. In the result, this bail application is dismissed. Sd/- (B.KEMAL PASHA, JUDGE) aks/03/03 // True Copy // PA to Judge

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