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Court : Delhi

Decided On : Jun-04-1993

Reported in : 1993IIIAD(Delhi)31; 51(1993)DLT67

Judge : Jaspal Singh and; C.M. Nayar, JJ.

Acts : [Constitution of India](#) - Article 226; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B

Appeal No. : Criminal Miscellaneous Appeal No. 354 of 1993 and Criminal Writ Appeal No. 349 of 1993

Appellant : Govind Ram and ors.

Respondent : Central Bureau of Investigation and ors.

Advocate for Pet/Ap. : D.C. Mathur,; R.M. John,; S.K. Saxena,;

Judgement :

Jaspal Singh, J.

(1) On 30/04/1993 the petitioners were arrested under Section 120B read with Section 420 of the Indian Penal Code. Section 25 of the Arms Act, 1959, Section 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA) and under Section 132 of the Customs Act.

(2) On 12/05/1993 the learned Additional Chief Metropolitan Magistrate. Delhi dismissed the bail application on the ground that there being 'sufficient grounds' to believe that the provisions of Tada were attracted, he was not competent to entertain the bail application. Subsequently, the petitioners moved the Designated Court which, by its order dated 20/05/1993, dismissed the bail application. The last paragraph of the order may be reproduced with profit. It runs as follows :

'AT the stage of bail, I am of the view that when prima facie there appears atleast some offence of non-bailable nature and possibility of other heinous offences having been committed (which only further investigation may or may not be able to show) a situation where the accused may be able to adversely influence the investigation by getting released on bail should not be allowed to come into existence. I can only observe that so far as the assertion of C.B.I, that some offence under Tada (P) Act will also be revealed is concerned, it is bet (sic) to withhold 'remark about it on the part of this Court as the Court should best wait the outcome of further investigation. But from the material collected considering the other offences, the bail at this stage cannot be granted to either of the applicants. The petition is declined. But I may observe here that the investigation must proceed with expedition and without latches,'

(3) On 24/05/1993 the petitioners filed the writ of Habeas Corpus alleging that they were in 'wholly unlawful and illegal custody' that no provision of Tada was attracted and that in fact they had committed no penal offence. Along with the writ petition they also moved a criminal miscellaneous petition for their release from 'wrongful custody and detention' pending the disposal of the writ petition. It is that application which has led

to this order.

(4) First a brief resume of the facts. Admittedly petitioner Nos. 1 & 2 are the Directors of a company namely M/s. G.D. Ferrro Alloys (P) Ltd. It is claimed that petitioner No. 3 was also its Director but ceased to be so with effect from 5/12/1992. On 29/04/1993 a case was registered against the Company and the petitioners being their Directors or 'looking after and managing the affairs of the Company' were arrested allegedly on account of their having imported parts of fire arms in the garb of stainless steel melting scrap as well as scrap from A & A Metals Inc, Clinton Drive, Houston, Texas, USA. Out of the nine boxes so imported, two boxes were allegedly Found to contain the following parts of fire arms :

'SLIDES 4093, pistol body 405, barrel 9mm 1850, pistols, magazine 291, breech block 809, 22' pistols barrel 334, body of breech block 316, 22 pistols, body 146, 9mm pistols trigger 571, pistol hammer 733 and trigger guards 303.'

In addition 297 Kgs of small parts of fire arms mechanism had also been allegedly found. It is claimed that most of the fire arms appeared to be of prohibited bore.

(5) On recovery of the above-noted parts of fire arms, a visual inspection was done by a Ballistics Expert, from the Central Forensic Science Laboratory. He reported:

'ON your request, I visited Icd Depot, Pragati Maidan, N. Delhi today and visually examined some of the contents of a container there which is said to be scrap material. In my opinion, the contents of the container are parts of Fire Arms, some of them bearing markings of Arms Manufacturing Company Ruger (USA). However, if a detailed report is desired the same will be given after laboratory examination of the material.'

(6) As per the Central Bureau of Investigation steps have already been taken to investigate the matter in U.S.A. and other countries and that 'possibility of their (petitioners) having links with the terrorists or anti-social elements can't be ruled out.'

(7) Time now to deal with the arguments advanced. It was contended, on the basis of the Supreme Court judgment in Paras Ram v. State of Haryana, 1993 CrL. L.J. 416, that even if it be assumed that parts of fire-arms had been recovered. Section 5 of the Tada would not be attracted since no 'ammunition' had been recovered. Undoubtedly, the Apex Court has held that the words 'arms and ammunition' appearing in Section 5 of the Tada have to be read conjunctively and that mere recovery of 'arms' without there being any recovery of 'ammunition' would not make Section 5 applicable. However, what we can ill-afford to ignore is that the petitioners have been arrested not only under Section 5 of the TADA but also under Section 120-B read with Section 420 of the Indian Penal Code, Section 25 of the Arms Act and Section 132 of the Customs Act and that the Designated Court, after giving proper hearing refused to grant them bail. Admittedly, no appeal has been filed against that order though the Supreme Court could be approached under Section 19 of the TADA.

(8) What we are trying to emphasize is that the petitioners have now been in judicial custody by virtue of a judicial order passed by a competent Court and that bail has been refused to them by a speaking order which has not been appealed against and further that the petitioners are in judicial custody not only on account of their having been arrested under Section 5 of the Tada but also on account of registration of First Information Report under Section 120B read with Section 420 of the Indian Penal Code besides Section 25 of the Arms Act and Section 132 of the Customs Act with regard to which there was not even a murmur in protest. Under the circumstances, we are not inclined to hold, for the present at least, that the petitioners are in 'wrongful custody and detention'. This being the position we do not feel inclined to release the petitioners pending the disposal of the writ petition.

(9) Before concluding, we may mention that our attention had also been drawn to an order of the Bombay High Court in Sanjay Dutt v. The State of Maharashtra in Writ Petition No. 574 of 1993. The order is of 5/05/1993. The High Court granted bail pending the disposal of the main writ petition on the ground that

prima facie Tada was not applicable in the 'facts and circumstances' of the case and also in view of the facts that accused's custody was not required for the purpose of investigation and as he did not 'appear to be concerned with any conspiracy relating to the bomb blasts.'

(10) Every case is an island unto itself. In any case, the order passed by the Bombay High Court in Sanjay Dutt v. State of Maharashtra provides no precedent it being clearly distinguishable on facts. The accused, in that case, was not charged with offences other than the one under Section 5 of the TADA. The investigation too, it appears was complete. The accused did not even 'appear to be concerned with any conspiracy relating to the bomb blasts.' In the case before us the petitioners have not only been arrested under Section 5 of the Tada but, as noticed above, also under Section 120B read with Section 420 of the Indian Penal Code, Section 25 of the Arms Act and under Section 132 of the Customs Act. The investigation is yet at the stage of infancy. Since the investigation is at its initial stages and the situation is fluid, we are not inclined to ignore, not at this stage at least, that the Investigators are also suspecting, (for this is what we were told) possible links of the petitioners with terrorists or antisocial elements. And, let us also not forget that huge quantities of parts of arms are alleged to have already been recovered.

(11) THUS. LOOKED at from any angle, we find ourselves unable to make ourselves agree to the contention that the petitioners deserve to be released. They do not. The last word. Nothing said in this order shall be read as an expression of opinion on the merits of the writ petition.

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