

Kutbuddin and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-07-1966

Reported in : AIR1967Raj257

Judge : B.P. Beri, J.

Acts : [Official Secrets Act, 1923](#) - Sections 3; [Code of Criminal Procedure \(CrPC\)](#), 1898 - Sections 498

Appeal No. : Criminal Misc. Appln. No. 856 of 1966

Appellant : Kutbuddin and ors.

Respondent : State of Rajasthan

Advocate for Def. : Raj Narain, Dy. Govt. Adv.

Advocate for Pet/Ap. : M.Y. Nuri, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.P. Beri, J.

1. This is a bail application under Section 498 Cr. P. C. on behalf of four accused persons who are facing their trial before the District Magistrate, Jaipur under

Section 3 read with Section 9 of the Indian [Official Secrets Act, 1923](#) (Act XIX of 1923) (hereinafter called 'the Act') and Rules 39 and 41 of the Defence of India Rules.

2. Mr. Nuri appearing for the applicants urged that they were arrested on 19th September, 1965 and excepting for a brief interval when they were admitted to bail by this Court, they have been throughout in custody. Section 3 of the Act, urged the learned counsel, envisages two categories of offences. The first is when any person for any purpose prejudicial to the safety or interests of the State, inter alia, obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy, then he shall be punished with imprisonment for a term which may extend to 14 years, if the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code. In other cases, which belong to the second category, the punishment provided is 3 years.

The first category of offence according to Section 12 is non-bailable but all other offences under the Act are bailable. The contention is that according to the statements of the witnesses recorded by the police concerning the applicants there is no evidence to show that the information collected or communicated by any one of the applicants related to any work of defence, arsenal, naval, military or air force establishment or station. Giving of information regarding Rajasthan Armed Constabulary was only giving information regarding police and not military, urged the learned counsel. The case was, therefore, clearly one punishable, if proved, by 3 years' rigorous imprisonment and accordingly bailable.

The second contention of the learned counsel is that the applicants were being prosecuted under Section 3(1)(c) and unless the information was obtained, collected, published or communicated for being useful to an 'enemy' the offence under Section 3 liable to be punished with 14 years imprisonment was not made

out. Pakistan was not an 'enemy' of India until August/September 1965. There was no evidence that any of the accused did any of the acts aforesaid after May 1965. Therefore the accused were entitled to be released on bail, He also submitted that some of the accused had large families and the borders between India and Pakistan being sealed there cannot be any legitimate apprehension of their going away to Pakistan or a reasonable possibility of their being not present to face the trial.

3. Mr. Raj Narain, Deputy Government Advocate controverting the contentions of the learned counsel for the applicants submitted that if there was a doubt whether an offence under Section 3 punishable with 14 years' or for 3 years' imprisonment was committed by the four applicants, for the purposes of granting bail it should be assumed that it is the offence punishable with 14 years' imprisonment which appears to have been committed. He placed reliance on the State v. Jagjit Singh, AIR 1962 SC 253. Regarding the evidence in this case the learned Deputy Government Advocate submitted that according to the statement of Abdul Hamid recorded under Section 164 Cr. P. C. on 8th December, 1965 one of the applicants obtained the entire list of officers belonging to 61 Cavalry and got it typed. This, argued the learned Deputy Government Advocate, was information relating to defence or military establishment.

It is further shown by Farukh Ali, another witness, that one of the applicants went to Delhi in June 1965 and visited Pakistan High Commissioner's Office more than once and for a long time he remained in the office leaving behind his son and the witness who was his servant outside the embassy's gate. The confession of Mushiruddin has also shown that he passed information relating to the Rajasthan Armed Constabulary and also the circular relating to the security arrangements of the Prime Minister of India. B.D. Joshi, another witness, has deposed that one of the applicants had collected the plans of the aerodrome of Jodhpnr and air strips of Salawas, Banar, Mathaniya and Bhagat-ki-Kothi, etc., which he took to Delhi. According to the evidence of E.N.V. Naiyar, Deputy Superintendent of Police Headquarters. Rajasthan Armed Constabulary was a part of the main force for border security.

The learned Deputy Government Advocate drew my attention to Section 3, Sub-section (2) which lays down that on a prosecution for an offence punishable under this section with imprisonment for a term which may extend to 14 years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document or information relating to or used in any prohibited place, etc. was collected it shall be presumed that he obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

4. In the case of AIR 1962 SC 253 Wanchoo, J. delivering the judgment of the Supreme Court observed:-

'Whenever an application for bail is made to a Court, the first question that it has to decide is whether the offence for which the accused is being prosecuted is bailable or otherwise. Even if the High Court thought that it would not be proper at that stage where commitment proceedings were to take place to express an opinion on the question whether the offence in this case fell under Section 5 (of the Indian Official Secrets Act, 1923) which is bailable or under Section 3 which is not bailable, it should have proceeded to deal with the application on the assumption that the offence was under Section 3 and therefore not bailable This, in our opinion, was the basic error into which the High Court fell in dealing with the application for bail before it, and it should have considered the matter even if it did not consider it proper at that stage to decide the question whether the offence was under Section 3 or Section 5, on the assumption that the case fell under Section 3 of the Act'.

In view of this observation of the Supreme Court I shall have to assume that the case against the applicants falls under Section 3 and is punishable with 14 years' rigorous imprisonment. Apart from this assumption, the evidence mentioned by the learned Deputy Government Advocate is prima facie indicative that the information relating to aerodromes, about the strength of the 61 Cavalry and the like were

obtained and passed by some of the applicants. There is evidence of continued association and collaboration between the 4 applicants before me in their activities. Besides this, the presumption engrafted in Sub-section (2) of Section 3 of the Act fortifies the prima facie case being under Section 3 punishable with 14 years' rigorous imprisonment, which is non-bailable.

5. On the question of the construction of the word 'enemy' in Section 3 of the Act the argument is that Pakistan was not enemy of India at the material point of time when the information was collected and, therefore, Section 3 was not attracted. In my opinion, the argument is untenable. If the argument was accepted it would come to this: That the active spies may collect valuable information and pass to a foreign State before the actual hostilities at the pain of a small punishment to the great prejudice of the State without falling within the mischief of offence under Section 3 punishable with 14 years' rigorous imprisonment. This could not have been the intention of legislature.

In my opinion, the term 'enemy' in Section 3 includes any unfriendly State. Under the Official Secrets Act, 1911, of Great Britain on the pattern of which our Act of 1923 has been apparently drafted, the word 'enemy' came to be interpreted in the case of *R. v. Parrott* (1913) 8 Cri. App. Rep. 186 by Phillimore, J. The learned Judge observed as follows:

'When the statute uses the word 'enemy', it does not mean necessarily some one with whom this country is at war, but a potential enemy with whom we might some day be at war.'

Parrott had collected and was going to collect information for Germany in 1912 when he was apprehended. His case was decided on 28-2-1913 when there were no hostilities between Great Britain and Germany the World War I having broken out on 4-8-1914 and yet Parrott's conviction was maintained on the ground that he obtained and was about to obtain information regarding defence for an enemy. I am in respectful agreement with this view.

6. The offence under Section 3 is a serious one and its gravity was assessed by their Lordships of the Supreme Court in the case of AIR 1962 SC 253 where they

were pleased to cancel the bail granted to Captain Jagjit Singh by the High Court of Punjab. It is unfortunate that the prosecution of the applicants has taken a long time and it will be just and proper if the trial is expedited. But having regard to the circumstances of the allegations against the applicants, I am not prepared to admit them on bail. Their application is accordingly dismissed.

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