

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1650 of 2011

UMARMIA ALIAS MAMUMIA

.... Appellant(s)

Versus

STATE OF GUJARAT

....Respondent

J U D G M E N T

L. NAGESWARA RAO, J.

This Appeal is filed against the Judgment dated 16.06.2010 in Criminal Misc Sr. No.44 of 2010 by which the Court of Designated Judge (TADA) at Porbandar (hereinafter referred to as the '*Designated Court*') rejected the bail application filed by the Appellant under Section 439 Cr.P.C. and Section 20 (8) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the '*Act*').

2. Crime No. I-43 of 1994 was registered under Section 154 Cr.P.C. for offences committed under Section 121, 121A, 122, 123, 124B r/w 34 of the Indian Penal Code, Section 25 (1A), (1B) and 25(1AA) of the Arms Act, Sections 9-B of the Explosives Act, Sections 3, 4, 5 and 6 of the Explosive Substances Act and Sections 3, 4 and 5 of the Act. The

statement of one Suresh recorded under Section 108 of the Customs Act revealed that explosive substances, powder RDX boxes, bags containing fire arms, 45 bags of weapons, 15 boxes of RDX and 225 pieces of silver ingots were smuggled into the country and taken to Zaroli and Dhanoli villages of Valsad District. The first charge-sheet was filed on 12.01.1995 in which the name of the Appellant is found at serial No.1 in column No.2 which refers to persons who were absconding. The 11th supplementary Charge-sheet was filed on 06.06.2005 wherein it was mentioned the Appellant was arrested at 1700 hrs on 10.12.2004.

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3. The involvement of the Appellant in the crime was set out in detail in the charge-sheet dated 06.06.2005. The Appellant conspired with Iqbal A Hussain and others sent by Mustapha Majnu Sheikh from Mumbai at his residence at Memonwada, Porbandar and finalized the plan to unload the ammunition. It was mentioned, *inter alia*, that the Appellant was present at the time of delivery of RDX, weapons etc. and he supervised the transport of some weapons to his house. The rest of the material was loaded in three tempos and was sent to Ghanoli village. Thereafter the Appellant fled away to Dubai.

4. On 17.12.2010 the Appellant filed Criminal Misc. Application No.44 of 2010 in TADA case No. 3 of 2005 in the Designated Court seeking bail under Section 439 Cr.P.C. read with Section 20 (8) of Act. The Designated Court by its judgment dated 16.06.2010 dismissed the bail application and held that on perusal of the material on record, a *prima facie* case of Appellant's involvement in serious offences under TADA was made out. The Designated Court refused to release the Appellant on bail after examining his confessional statement recorded under Section 15(2) TADA. The Court also took note of the fact

that the Appellant absconded for 10 years from 08.03.1994 to 10.12.2004. Likelihood of tampering of evidence and witnesses being influenced were also grounds which were taken into consideration by the Designated Court to deny bail. The Appellant filed this appeal challenging the validity of the said judgment dated 16.06.2010 of the Designated Court.

5. Mr. Sushil Kumar, learned Senior Counsel appearing for the Appellant submitted that the entire proceedings are vitiated due to no prior approval being taken from the District Superintendent of Police under Section 20A (1) of the TADA Act before registration of First Information Report. He further submitted that 192 witnesses have been cited out of whom only 25 witnesses have been examined so far and there is no likelihood of the completion of the trial in the near future. He also stated that many of the other accused have either been released on bail or had the benefit of the proceedings against them being quashed. He pleaded for grant of bail in view of his long incarceration for more than 12 years. To buttress his submission the counsel relied upon the judgments of this Court in **Izharul Haq Abdul Hamid Shaikh v. State of**

Gujarat (2009) 5 SCC 283, Ashrafkhan v. State of Gujarat (2012) 11 SCC 606 and Hussein Ghadially v. State of Gujarat (2014) 8 SCC 425.

6. Mr. Yashank Adhyaru, learned Senior Counsel appearing for the Respondent-State of Gujarat made an attempt to convince us that sanction was, in fact, granted under Section 20A (1). According to him, there was an error in the order dated 08.04.1994 which mentioned that approval was granted under Section 20A (2). He submitted that a plain reading of the said order would disclose that the approval was actually granted under Section 20A (1). He urged that the Appellant is the master mind of the conspiracy which resulted in smuggling of large scale arms and ammunition into the country. He submitted that there is every likelihood of the Appellant fleeing justice, if released on bail.

7. Section 20-A of the Act reads as under:

“20-A. Cognizance of offence.—

(1) Notwithstanding anything contained in the Code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.

(2) No court shall take cognizance of any offence under this Act without the previous sanction of the Inspector General of Police, or as the case may be, the Commissioner of Police.”

8. In *Izharul Haq Abdul Hamid Shaikh's* case (Supra) this Court granted bail to the Appellant therein. In the said case also the FIR was registered on 08.03.1994 relating to the smuggling of arms and ammunition at Porbandar. This Court held that prior approval under Section 20A (1) of the Act was a *sine qua non* for recording of First Information Report. The Appellant therein was granted relief on the ground that prior approval was not obtained before recording the FIR. The submission of Mr. Sushil Kumar, who appeared for the Appellant in that case, that prior approval under Section 20A (1) was not accorded by the competent authority was accepted by Mr. Adhyaru who appeared for the State of Gujarat in that case. Mr. Adhyaru's submission in *Izharul Haq Abdul Hamid Shaikh's* case that though the order of approval wrongly mentioned Section 20A(2) it was actually an order under Section 20A(1), was not accepted. Mr. Adhyaru raised the same point again before us relying on order dated 08.03.1994. We permitted the Senior Counsel to read out the order dated 08.03.1994 but we are not convinced that

it was passed under Section 20A(1) and not under Section 20A(2).

9. It is no more *res integra* that infraction of Section 20A (1) of the TADA Act would vitiate the entire proceedings and result in acquittal of the accused for offences under the Act. **(See: *Anirudhsinhji Karansinhji Jadeja v. State of Gujarat*, (1995) 5 SCC 302; *Prakash Kumar v. State of Gujarat*, (2005) 2 SCC 409; *Izharul Haq Abdul Hamid Shaikh v. State of Gujarat*, (2009) 5 SCC 283; *Ashrafkhan v. State of Gujarat*, (2012) 11 SCC 606; *Hussein Ghadially v. State of Gujarat*, (2014) 8 SCC 425)**
10. After considering the submissions of both sides, we are of the opinion that the Appellant is entitled to be released on bail for the following reasons:
- A. The prior approval required under Section 20A (1) of the TADA Act was not taken from the District Superintendent of Police before the FIR was recorded.
- B. Admittedly, the Appellant had been suffering incarceration for more than 12 years.
- C. Only 25 out of 192 witnesses have been examined so far.
- D. There is no likelihood of the completion of trial in the near future.

E. Though there is a confessional statement of the Appellant recorded under Section 15 of the TADA, the same cannot be looked into by us in view of the violation of Section 20A (1) of the TADA Act.

11. This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See: ***Supreme Court Legal Aid Committee v. Union of India, (1994) 6 SCC 731; Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616***) Accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. (See: ***Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 and Babba v. State of Maharashtra, (2005) 11 SCC 569***).

12. Though the Appellant is involved in serious offences and has absconded for a period of 10 years before he was arrested in 2004, we see no reason to confine him to jail as he has already suffered more than 12 years in custody and the trial may not be completed in the near future. Taking

note of the above, we grant relief of bail to the Appellant

subject to the following conditions:

- a. The Appellant will furnish a bail bond in the sum of Rs.1 lakh (One Lakh only) with one surety for a similar amount.
- b. The Appellant will reside at Porbandar and report daily to the City 'B' Division Police Station, Porbandar at 6:00 PM. He shall not leave the territory of Porbandar.
- c. If the Appellant is required to attend any Court outside Porbandar the same may be done through video conferencing to be organized by the State. If video conferencing cannot be arranged the Appellant will be produced before any court, if necessary, through Escort by the Police.
- d. The Passport of the Appellant shall be surrendered before the Designated Court.
- e. The Appellant shall not indulge in tampering of evidence and influencing of witnesses.
- f. The State is at liberty to move for cancellation of bail, if the Appellant is found to be tampering with the evidence or causing hindrance to the progress of the trial.

13. As the case pertains to the year 1993, the Designated Court is requested to expedite and complete the trial at the earliest. With the above directions, the Appeal is allowed.

.....J
[S. A. BOBDE]

.....J
[L. NAGESWARA RAO]

New Delhi,
February 01, 2017



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