

Adarsh Singh Rajawat Adarsh Golu vs The State Of A.P. on 25 February, 2022

Author: C.Praveen Kumar

Bench: C. Praveen Kumar

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THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE DR. JUSTICE K. MANMADHA RAO

Criminal Appeal No. 311 of 2021

JUDGMENT:

(Per Hon'ble Sri Justice C.Praveen Kumar)

1) The Appellant herein, who is Accused No. 16, filed the present application under Section 21(4) of National Investigation Agency Act, 2008, ['NIA Act'], assailing the Common Order, dated 25.08.2021, passed in CrI. M.P. No. 315 of 2021, wherein, the application filed by the Appellant seeking bail was dismissed.

2) The facts, which lead to filing of the present application, are as under:

i. On 15.11.2019, the Counter Intelligence Cell, Andhra Pradesh, received information that during the year 2011 to 2019 some unidentified foreign nationals entered into conspiracy with some persons in places like Visakhapatnam, Mumbai etc., to carry out anti-national activities in India. Money was transferred through various legal/illegal channels into bank accounts of certain unknown persons at Visakhapatnam and other places for recruiting agents to collect and transmit sensitive and classified information pertaining to vital defense installations in the country. In respect of the above, a case in Crime No. 1 of 2019 came to be registered on 16.11.2019 for the offences punishable under Sections 120B and 121A of Indian Penal Code ['I.P.C.'], Sections 17 and 18 of Unlawful Activities (Prevention) Act, 1967, ['UA(P) Act'], and Section 3 of the Official Secrets Act, 1923.

ii. During the course of investigation, the Counter Intelligence Cell, Vijayawada, conducted raids at the residential premises of A2 to A5 and A15 and also at the work places of A6 to A13 and A16 to A18 [Navy persons] under Section 165 Cr.P.C. During the course of the said search, incriminating

material came to be seized in the form of electronic gadgets i.e., mobile phones, memory cards, SIM cards, pen-drives, bank documents and identity documents etc., from the possession of A2 to A13 and A15 to A18. Consequent to the material seized, A6 to A13, A15 to A18 were arrested.

iii. Considering the gravity of the offence and its ramifications across the Country, Government of India, in exercise of the power conferred under Section 6(4) read with Section 8 of NIA Act, directed the National Investigation Agency to take up investigation, and, accordingly, the case was transferred and re-registered as RC-05/2019/NIA/HYD, dated 29.12.2019, for the very same offences. iv. The averments in the charge-sheet further disclose that, during the course of investigation, thirteen [13] Navy personnel and two [02] civilians were arrested between 19.12.2019 and 29.12.2019 and remanded to police custody for five [05] days from 18.01.2020 to 22.01.2020 by NIA Special Court, Vijayawada. During their interrogation, relevant material showing their involvement in the offence came to light. The investigation also discloses that Navy personnel were found in touch with foreign nationals / spies, through Facebook / WhatsApp. The investigation further disclose that the Appellant herein along with others shared sensitive official secrets with foreign nationals/spies such as, location/movement of Indian Navy Ships/Submarines, training exercises with Foreign countries, Deployment of Indian Navy Ships/Submarines, transfers/posting details of Navy Officials, technologies used by Indian Navy Ships, through WhatsApp and Facebook. It is alleged that money was received from A4 and A15 for sending crucial information. v. Investigation also discloses that online handlers elicited secret and sensitive information of Navy Establishments from Navy Personnel with different pseudonyms. The money was sent from common Indian agents like Mohd Haroon Lakdawala [A5], Shaista Qaiser [A15] and Abdul Rehman [A4], who used to get Pakistani clothes/garments and other goods from their Pakistan associates by illegal means via Dubai. A5 and A15 were arrested by NIA for their active involvement in the conspiracy and sending money to accused Navy personnel in furtherance of the conspiracy on the instructions of foreign agents. Material seized from A9, A10 and A11 clearly reveals the instructions received for use of mobile phone, storing and transmission of classified information including photographs, videos or any other official information. vi. It is categorically stated in the charge-sheet that Navy personnel intentionally took photographs, videos of strategic positions and vessels etc., and shared the information with their online handlers. The charge-sheet further discloses that one of the accused communicated with his online handlers about number of ships deputed along Pakistan Sea border after Pulwama attack which includes posting of his ship. The Headquarters of WNC also confirms the said fact.

3) Coming to the role of the Appellant [A16] herein, paragraph Nos. 17.27.15 and 17.28.12 of the charge-sheet, states as under:

17.27.15: Role and involvement of Adarsh Singh Rajawat [A16]: He was arrested on 28.12.2019 from INS Subhadra, Naval Base, Mumbai. He joined Indian Navy in April 2017 and was posted at INS Kadamba and Subhadra.

Investigation revealed that he was using Facebook ID.100006056418472 [Profile name: Adarsh Rajawat] and WhatsApp with mobile number 7974309536. He came in contact with online handler 'Ashi Rajput @ Harish Rajput' over Facebook [ID 100022766604282]. Later, during October, 2019,

the accused shared his WhatsApp number 7974309536 with 'Ashi Rajput @ Harish' who was using WhatsApp with mobile number 9898606736. A.P. S.F.S.L. examination report of mobile phone and SIM cards seized from A16 revealed that he shared details of INS Nirghat on 17.11.2019. 'Ashi Rajput @ Harish Rajput' asked accused multiple times to provide his salary account details for money transfer but the accused consistently refused for the same stating that he did not want anything extra. Further, on 23.12.2019, 'Ashi Rajput @ Harish Rajput' shared the screenshot of news regarding arrest of Navy personnel in espionage case. It is also revealed that A16 deleted the WhatsApp conversation between him and 'Harish' @ 'Ashi Rajput' as per latter's directions. He saved WhatsApp number of Ashi Rajput as "Harish Cuisn frnd" to avoid suspicion his anti-national activities. Thereby, accused Adarsh Singh Rajawat [A16] has committed offences under Sections 120B and 201 of Indian Penal Code, 1860, Section 18 of the Unlawful Activities (Prevention) Act, 1967, and Sections 3, 4 and 5 of The Official Secrets Act, 1923. 17.28.12: Scrutiny report of Adarsh Singh Rajawat [A16's] phone: It is revealed that, mobile number 9898606736 of 'Ashi Rajput @ Harish Rajput' is saved as 'Harish cuisn Frnd'. He shared details of INS Nirghat on 17.11.2019. On 20.11.2019, 03.12.2019 & 09.12.2019, 'Ashi Rajput @ Harish Rajput' asked accused to provide his account details for money transfer. Further, on 23.12.2019, 'Ashi Rajput @ Harish Rajput' shared the screenshot of news of arrest regarding arrest of Navy personnel in espionage case. The examination report has also revealed that Adarsh Singh Rajawat [A16] purposely deleted the WhatsApp chat between him and 'Harish @ 'Ashi Rajput' as per latter's directions. Handler Ashi Rajput enquired with the accused about decommissioning of Ganga and A16 replied that it was Nirghat not Ganga. The secret code used by 'Harish' @ 'Ashi Rajput' to initiate chat with Adarsh Singh Rajawat [A18] was 'Jai Shri Ram" and to conclude the chat was 'Jai Hind' to avoid detection of law enforcement agencies. On 18.11.2019, A16 informed that BT had returned."

4) Sri. Y.V. Ravi Prasad, learned Senior Counsel, appearing for the Appellant, would submit that there is absolutely no material connecting the Appellant with the crime. According to him, the Appellant is a Cook in INS Nirghat, which was decommissioned on 11.01.2018 itself. That being the position, question of Appellant involving in offences, as alleged, is highly improbable and incorrect. He took us through the provisions of the UA(P) Act and also the Official Secrets Act, to show that the acts of the Appellant, even accepted to be true, do not fall within the meaning of terrorist. According to him, the averments in the charge-sheet nowhere indicate that the Appellant was disclosing information to foreign handlers. He relied upon a Judgment of the Hon'ble Supreme Court in Thwaha Fasal V. Union of India¹, to show that Section 43D of UA(P) Act only speaks about giving an opportunity to Public Prosecutor and it is not necessary for the accused to prove that there is no material against him as required under Section 37 of Narcotics Drugs and Psychotropic Substances Act, 1985 ("N.D.P.S. Act").

5) Sri. N. Harinath, learned Counsel appearing for the Respondent, opposed the same contending that a reading of the charge-sheet would clearly disclose that the Appellant has indulged in acts, which are detrimental to the security of the country. He took us through the charge-sheet to show the material collected by the investigating agency showing the involvement of the Appellant in connection with the crime. According to him, the electronic data extracted from the social media accounts of the Appellant clearly show that the Appellant along with others were sharing sensitive information with online handlers, who has a base in foreign country.

6) The role of the Appellant herein, as extracted above, would show that he joined Indian Navy in 2017 and posted in INS Kadamba and Subhadra. He was using Facebook ID.100006056418472 [Profile name: Adarsh Rajawat] and WhatsApp with mobile number 7974309536. The material on record reveal that he came into contact with one 'Ashi Rajput @ Harish Rajput', shared his WhatsApp number with him in October 2019, who was using WhatsApp with mobile number 2021 SCC Online SC 1000 9898606736. SIM cards and cell phones seized from the Appellant revealed that he shared details of INS Nirghat on 17.11.2019 with Ashi Rajput. Further, on 23.12.2019, Ashi Rajput shared the screenshot of news regarding arrest of Navy personnel in espionage case. The scientific evidence would show that the Appellant deleted WhatsApp conversation between him and Harish Rajput, as per latter's directions. Further, Navy personnel were in constant touch with foreign agents / spies, who have social media accounts and clandestinely transferred sensitive information of Indian Navy.

7) An analysis of mobile phones / SIM cards seized from the accused would show that conversation between online handler and the Appellant was found in file name 'Chat-59" having path: "ITEM1\VIVO_1818_DS V15 Pro\chats\WhatsApp_ Native". The entire text of conversation retrieved from the cell phones are placed on record. Apart from that, screenshots are also placed on record evidencing his contacts with online handlers. The images shared by online handler Harish Rajput with Appellant are also enclosed along with charge-sheet apart from the Facebook conversation between Harish Rajput and the Appellant. If really the Appellant was only a Cook and has nothing to do with handlers / spies stationed elsewhere, there was no need for him to enter into conversations, which is running into 30 to 40 pages, starting from November 2019.

8) At this stage, it would be appropriate to refer to the provisions of law under which the Appellant is charge-sheeted.

9) Section 17 of UP(A) Act, deals with "Punishment for raising funds for terrorist act". It reads as under:

"17. Punishment for raising funds for terrorist act - Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organization or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine. Explanation.-For the purpose of this section,

(a) participating, organising or directing in any of the acts stated therein shall constitute an offence;

(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and

(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under section 15 shall also be construed as an offence.]"

10) Section 18 deals with "Punishment for Conspiracy". It reads as under:

"18. Punishment for conspiracy, etc. - Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directs or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

11) Referring to Section 17 of the UA(P) Act, the learned Senior Counsel for the Appellant would contend that the provisions of Section 17 can be invoked only if a person is involved in terrorist act. "Terrorist act" is defined under Section 15 of the UA(P) Act, which is as under:

"15. Terrorist act. --Whoever, does any act with intent to threaten or likely to threaten the unity, integrity, security [economic security] or sovereignty of India or with intent to strike terror or likely to strike in the people or any section of the people in India or in any foreign country,--

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or any other means of whatever nature to cause:

(i) death of, or injuries to any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or (iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-

governmental organization or any other person to do or abstain from doing any act; or] commits a terrorist act. Explanation. --For the purpose of this sub-section:

(a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as a public functionary;

(b) "high quality counterfeit Indian Currency" means the counterfeit currency as may be declared after examination by an authorized or notified forensic authority that such currency imitates or compromises with the Key security features as specified in the Third Schedule] [(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule]."

12) A reading of Section 15 would show that, if any person is involved in any act with an intention to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with an intention to strike terror or likely to strike in the people by any of the methods mentioned therein, which definition is exhaustive, is said to have indulged in terrorist act.

13) Before dealing with the above provisions, it would be appropriate to refer to Sub-section 5 of Section 43D of UA(P) Act, which is as under:

"43D Modified application of certain provisions of the Code.-

(1) x x x x x (2) x x x x x (3) x x x x x (4) x x x x x (5) Notwithstanding anything contained in the Code, no person accused to an offence punishable under Chapters IV and VI of this 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:

Provided 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. (6) x x x x x (7) x x x x x"

14) The stringent conditions for grant of bail in sub-section (5) of Section 43D will apply only to the offences punishable only under Chapters IV and VI of the UA(P) Act. In Thwaha Fasal [cited supra], which was relied upon by the learned Senior Counsel for the Appellant, was a case where the offence alleged was under Section 13, which fall in Chapter III. Hence, the accused there was not covered by sub-section (5) of Section 43D and will be governed by the normal provisions for grant of bail under the Code of Criminal Procedure, 1973. But, in the instant case, the offence falls under Chapter IV of the UA(P) Act.

Therefore, the rigour of proviso 5 to Section 43D has to be satisfied for granting bail.

15) While dealing with the offence falling under Chapter IV and VI of UA(P) Act, the court has to consider whether there are reasonable grounds to believe that the accusation against the accused are prima facie true. If the Court, after examining the material on record is satisfied that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused would be entitled to bail. It is now to be seen whether any prima facie material is there against the accused for the offences alleged in Chapters IV and VI of the Act. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. The Court while examining the issue of prima facie, as contemplated in sub-section (5) of Section 43D is not expected to hold a mini trial. The Court is not supposed to examine the merits and demerits of the evidence. If a charge-sheet is already filed, the Court has to examine the material forming a part of charge- sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is. [Thwaha Fasal [cited supra]].

16) The law on the subject is well settled by the combined High Court of Andhra Pradesh in National Investigation Agency, Hyderabad V. Saddam Hussain², wherein, it was held that, 2017(2) ALD 197 A.P. Section 43(D) of the Unlawful Activities (Prevention) Act, 1967, takes away the discretion of the Court to grant bail wherever it is of the opinion that there are reasonable grounds for believing that the accusations against the accused is prima facie true. In Afzal Khan @ Babu Murtuzakhan Pathan V. State of Gujarat³, the Hon'ble Apex Court held that, a bail application, in a case of this nature, which involves the security of the State should be rejected.

17) In National Investigation Agency V. Zahoor Ahmad Shah Watali⁴, the Hon'ble Supreme Court held that, in bail applications under Unlawful Activities (Prevention) Act, 1967, the approach should be different.

18) At this stage, the learned Senior Counsel appearing for the Appellant would submit that, since, the acts of the Appellant, even accepting them to be true, do not fall within the meaning of terrorist activities, rejecting the bail application warrants interference. It is to be noted that Section 15, which defines "Terrorist act" categorically states that, any activity done with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike in the people or any section of the people in India, or damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or Appeal (Crl.)

757 of 2007 2019(5) SCC 1 in connection with any other purposes of the Government of India, any State Government or any of their agencies, not only by using bombs, dynamite, inflammable substances, noxious gas etc, but by any other means of nature.

19) In our considered view, the relevant provision of the UA(P) Act, in relation to the grant or release on bail to an accused person, is enunciated as a non-obstante clause, which clearly and unequivocally postulates that, if the Court is of the opinion that, there are reasonable grounds for believing that the accusations against such person are prima facie true, he shall not to be released on bail. (Syed Mohd. Zishan Ali V. The State (NCT of Delhi)⁵.

20) The material available on record prima facie show the conduct of the Appellant in accepting the amounts from unknown persons and sharing information through WhatsApp and Facebook; deleting chats and information from the cell phones so as to avoid any suspicion against him, which is evident from the scientific evidence, and the Appellant assisting foreign agents / spies to gather information about the Indian Navy. Therefore, the act of the Appellant prima facie in our view fall within the meaning of "terrorist act" as defined under Section 15 of UP(A) Act. Hence, the argument of the learned Senior Counsel that the appellant do not fall within the meaning of CRL.A.923/2018, dt 29.04.2019) terrorist, as postulated in Section 5 and that the embargo to grant bail to the Appellant will not apply cannot be accepted.

21) Apart from that, the Appellant is also charged with offences punishable under Sections 3, 4 and 5 of the Official Secrets Act, 1923, which are grave and serious in nature.

22) Resultantly, we find no merit in the appeal. Accordingly the Criminal Appeal is dismissed. No costs.

23) Consequently, miscellaneous petitions, if any, pending shall stand closed.

----- JUSTICE C. PRAVEEN KUMAR
----- DR. JUSTICE K. MANMADHA RAO
Date:25.02.2022 S.M.../ THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR AND THE HON'BLE
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C.Praveen Kumar) Date: 25.02.2022.

S.M.