

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1702 of 2011

UMARMIYA ISMAILMIYA SAIYED @ MAMUMIYA PANJU MIYA.

.... Appellant

Versus

STATE OF GUJARAT

....Respondent

J U D G M E N T

L. NAGESWARA RAO, J.

The Court of Designated Judge (TADA) at Jamnagar (hereinafter referred to as the '*Designated Court*') dismissed the bail application of the Appellant by a Judgment dated 31.08.2010 aggrieved by which the Appellant has filed this Criminal Appeal.

2. FIR No.I-151 of 1993 was registered in Jamnagar City "B"

Division Police Station under Sections 3, 4 and 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987(hereinafter referred to as '*Act*') apart from the offences punishable under Section 120 B, 121, 122 B, 123 r/w 34 of IPC, Sections Section 25 (1A), (1B) and 25(1AA) of the Arms Act and Section 9-B of the Explosives Act, Sections 3, 4, 5, 6 and 9 of the Explosive Substances Act.

3. The case of the prosecution is that after demolition of the Babri Masjid in the year 1992, a conspiracy was hatched at Dubai for smuggling of contraband goods, arms and explosives to the sea coast of Gosa Bara near Porbandar. Harun Adam Sanghar, Usman Umar Koreja and others were arrested on the basis of information received by the police. On the basis of their statements, FIR was registered in Jamnagar City “B” Division Police Station vide crime register No.151 of 1993. The Appellant masterminded the conspiracy for smuggling a large quantity of arms and ammunition. After supervising the landing of the ammunition, the Appellant absconded and was arrested on 12.01.2005.

4. The Appellant filed Criminal Misc (Bail) application No. 380 of 2010 on the ground that a prima facie case was not made out against him and prior approval was not taken from the District Superintendent of Police under Section 20A (1) of the Act which vitiated the entire proceedings. The Appellant submitted before the Designated Court that a co-accused Usman Gani Noor Mohamad Merchant alias Munna was granted bail on 13.03.1996 on the ground of violation of Section 20A (1) of the Act, which was

confirmed by this Court by an order dated 30.04.1996 in SLP(Crl.) No. 981/96.

5. The Designated Court dismissed the bail application by an order dated 31.08.2010 on the ground that the Appellant was involved in serious offences and his enlargement on bail would be detrimental to the interest of the society.

6. The principal contention of Mr. Sushil Kumar, learned Senior Counsel, appearing for the Appellant is that no prior approval of the District Superintendent of Police was taken under Section 20A (1) of the TADA Act before recording the FIR. He 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**. The Counsel further submitted that the Appellant is entitled to be released on bail. He further submitted that the FIR was registered on 16.07.1993 and after a lapse of more than 23 years charges have not been framed till date.

7. Mr. Yashank Adhyaru, learned Senior Counsel appearing for the Respondent-State of Gujarat submitted that the Appellant is not entitled for being released on bail in view of his involvement in serious offences under TADA, IPC,

Arms Act, Explosives Act and Explosive Substances Act. He further submitted that the Appellant absconded for a period of 10 years and in the event of his being released on bail, there is every likelihood of his fleeing from justice. He also expressed his apprehension that the Appellant would indulge in tampering with the evidence and witnesses which would result in obstruction of justice. Mr. Adhyaru justified the delay in the framing of charges on the ground that the record has been lying in this Court for the past five years.

8. We have considered the submissions made by the counsels appearing for the parties. As per the law declared by this Court, Section 20A is mandatory and any violation of the procedure prescribed therein would vitiate the entire proceedings with respect to the TADA offences. This Court in **Izharul Haq Abdul Hamid Shaikh v. State of Gujarat reported in (2009) 5 SCC 283** released the Appellant therein on bail on the ground that Section 20A (1) was violated.

9. Without expressing any opinion on the merits of the matter, we are of the opinion that the Appellant is entitled to be released on bail only on the ground that the FIR was registered on 16.07.1993 in violation of the procedure

prescribed under Section 20A (1) of the TADA Act. There is no dispute about the fact that the Appellant has been in jail for more than 12 years and charges are not framed till date which itself is a ground for bail. **(See: Sanghian Pandian Rajkumar v C.B.I (2014)4 SCALE 74; Bal Krishna Pandey Alias Vidur V State of U.P. (2003)12SCC186; Dipak Shubhashchandra Mehta v. CBI, (2012) 4 SCC 134)**

10. Taking note of the above and the fact that the Appellant has been granted bail by this court in Criminal Appeal No.

1650 of 2011, 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 6:00PM. He shall not leave the territory of Porbandar.
- c. Whenever the Appellant is required to attend proceedings before the Designated Court for the purposes of Special TADA case No. 2 of 2005 arising from C.R. No.II-151/93 received at Jamnagar City "B" Division Police Station dated 16.07.93, the Appellant's attendance may be secured through video conferencing which has to be organized by the State. If video conferencing cannot be arranged, the Appellant will be

- produced before the Designated Court or any other court, if necessary, through Escort by the Police.
- d. The Passport of the Appellant shall be surrendered before the Court of Designated Judge (TADA) at Porbandar.
- 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.
- 11.** The Registry is directed to transmit the record to the Designated Court immediately. The Designated Court is directed to frame charges at the earliest and dispose of the matter expeditiously. With the above directions, the Appeal is allowed.

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

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

New Delhi,
February 01, 2017