

STATE OF MAHARASHTRA
v.
ANAND CHINTAMAN DIGHE

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JANUARY 16, 1990.

[M. FATHIMA BEEVI AND A.M. AHMADI, JJ.]

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Code of Criminal Procedure, 1973: Sections 437 and 438—Bail—Grant of—Factors to be considered.

Terrorist and Disruptive Activities (Prevention) Act, 1987: Section 20(8)—Offences under the Act—Accused—When could be granted bail.

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The respondent was a member of a political party. Consequent upon the defeat of the party in Mayoral elections held in March, 1989, the party felt that there was cross-voting and there were traitors among them and the respondent made a declaration that such traitors would not be spared. Thereafter the respondent was arrested in connection with the murder of one of the Corporators. He was accused of having committed offence under Section 3(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, besides offences punishable under Sections 148, 149, 120-B and 302 of the Indian Penal Code. The designated court released the respondent on bail while the investigation was pending.

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This appeal by the State is against the order of the designated court.

Allowing the appeal, this Court,

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HELD: 1. Sub-Section (8) of Section 20 of the Act clearly provides that unless the court is satisfied for the reasons to be recorded that there are reasonable grounds to believe that the respondent is not involved in disruptive activities bail shall ordinarily be refused. Even under the provisions of Section 437 and 438 of the Code of Criminal Procedure, the powers of the Sessions Judge are not unfettered. [75F]

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2. Where the offence is of serious nature the Court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence, character of the evidence, circum-

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A tances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the public or such similar other consideration. [76B-C]

B 3. In the instant case, the salient principles in granting bail in grave crimes have not been taken note of. The Court was obsessed by the fact that the respondent was associated with a political party and was oblivious of the nature of the allegations made against him and the relevant materials indicating that the respondent had been making utterances inciting violence. [76D]

C 4. This court would not ordinarily interfere with the discretion of the lower court in granting or refusing bail but in cases where bail has been granted on irrelevant considerations, such as the status or influence of the person accused and regardless of the nature of the accusation and relevancy of materials on record, this Court would not hesitate to interfere for the ends of justice. [75G-H; 76A]

D CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 669 of 1989.

From the Judgment and Order dated 18.5.1989 of the Designated Court, Poona in CrI. Bail Application No. 11 of 1989.

E G. Ramaswamy, Additional Solicitor General, S.V. Tarkunde and A.M. Khanwilkar for the Appellant.

U.R. Lalit and V.N. Ganpule for the Respondent.

F The Judgment of the Court was delivered by

G FATHIMA BEEVI, J. By the impugned order dated the 18th May, 1989 the Designated Court, Pune directed the respondent to be released on bail. The respondent was accused of having committed offence under Section 3(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'the Act') besides the offences punishable under Sections 148, 149, 120-B and 302 of the Indian Penal Code.

H The respondent was the member of the Shiv Sena Party and the Chief of the Thane District Unit. In consequence of the defeat of the party in Mayoral election held on 20th March, 1989 the party felt that

there was cross-voting and there were traitors among them. There had been a declaration by the respondent that such traitors would not be spared. The respondent was arrested in connection with the murder of one of the Corporators Shridhar Khopkar on 21.4.1989 on registering Crime No. 1348/89.

In releasing the respondent on bail while investigation was pending, the Designated Court appears to have been influenced by the fact that respondent was the leader of Political Party. The court assumed that as a leader, he would not be involved in such crimes and that there are reasonable grounds for believing that the respondent is not guilty of any offence under the Act.

Having heard both the sides, we feel that the whole approach by the learned Judge was misconceived and the order is unsustainable. We have been taken through the entire proceedings. We find that the learned Judge has not noticed the relevant provisions of the Act which restrict the powers of the Court in granting bail. The learned Judge had also refused to consider the materials placed before it for the purpose of satisfying himself whether there are no reasonable grounds to believe that the respondent has committed the offence. In the course of the investigation witnesses have been questioned and their statements have been reduced to writing. The learned Judge refused to consider the statements recorded in the course of the investigation for the simple reason that such statements had not been read out in open Court though the Court was empowered to peruse the case diary for the purpose of satisfying itself as to the stage of investigation and the nature of the evidence that had been collected.

Sub-Section (8) of Section 20 of the Act clearly provides that unless the Court is satisfied for the reasons to be recorded that there are reasonable grounds to believe that the respondent is not involved in disruptive activities, bail shall ordinarily be refused. Even under the provisions of Sections 437 and 438 of the Code of Criminal Procedure, the powers of the Sessions Judge are not unfettered. The salient principles in granting bail in grave crimes have not been taken note of.

This Court would not ordinarily interfere with the discretion of the lower court in granting or refusing bail but in cases where bail has been granted on irrelevant considerations, such as the status or influence of the person accused and regardless of the nature of the accusation and relevancy of materials on record, this Court would not

A hesitate to interfere for the ends of justice.

B There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court. Where the offence is of serious nature the Court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence, character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the public or such similar other considerations.

C In the present case the learned Judge observed that it is a case of respectable person of a big political organisation, his freedom cannot be curtailed if he is entitled to bail. His liberty cannot be curbed if enlarged on bail and, therefore, no kind of condition is required to be imposed. The Court also observed that being a leader of the big political organisation one cannot expect that the respondent will commit any offence if enlarged on bail and he cannot be called to be a criminal. The learned Judge was obsessed by the fact that the respondent was associated with a political party and was oblivious of the nature of the allegations made against him and the relevant materials indicating that the respondent had been making utterances inciting violence. The respondent gave repeated statements to the Press saying that the traitors' life will be made difficult and probably they will be killed. This was published in Marathi Daily 'Navakal' on 22.3.89. He repeated his threat and this appeared in an interview given to the reporter of the Weekly Magazine 'Lokprabha' in its issue of 9.4.1989. In an interview in daily 'Urdu Times' dated 16.4.1989 the respondent asserted that he knew the names of the traitors but could not disclose the same. He also asserted that the punishment for traitors is death and they would be killed and this decision has not been taken by him in anger.

G In the backdrop of such assertions, it was necessary for the Court to consider the further materials collected by the investigating agency by recording statements of witnesses. The court below misdirected itself in refusing to look into such statements and concluding that it is a case for granting bail taking into account only the position held by the respondent in the party. The court clearly erred in disposing of the application for bail.

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In view of what has been stated above, we set aside the order of the Designated Court and allow the appeal and cancel the bail granted to the respondent, without prejudice to his right to move the Designated Court at any subsequent stage. **A**

G.N.

Appeal allowed. **B**