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SANJAY DUTT

v.

STATE OF MAHARASHTRA

OCTOBER 16, 1995

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[G.N. RAY, N.P. SINGH AND B.L. HANSARIA, JJ.]

*Terrorists and Disruptive Activities (Prevention) Act, 1987 :*

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*Bail—Rejection of—Constitution of Central/State's Committees to review TADA cases—Maharashtra Committee—Review of cases by—Report considered by Central Committee—Categorisation of accused into three categories, last being those who could be released on bail—Bail application for release of twelve accused persons filed including that of appellant—No objection by State as to grant to bail—Rejection of fresh bail application by designated Court—Appeal—Held : In the circumstances of the case bail should be granted on specified conditions.*

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The appellant is facing trial for offences under Terrorists and Disruptive Activities (Prevention) Act, 1987 and The Arms Act, 1959. His bail application was rejected by the Designated Court. In the meanwhile pursuant to the directions given by this Court in *Kartar Singh v. State of Punjab*, [1994] 3 SCC 569. Review Committees were constituted by the Central as well as State Governments to review the TADA case. Thereafter the Maharashtra State Review Committee examined the case of different accused persons and submitted its report to the Central Review Committee which opined that Chief Public Prosecutor should bring to the notice of Designated Court the deserving cases for grant of bail. The Chief Public Prosecutor filed a petition before the Designated Court categorising the accused persons in Bombay Blast case into three categories - the third category being the accused who could be released on bail. It was also stated that the State Government had no objection to the 12 accused persons including the appellant being released on bail. However, appellant's fresh bail application was also rejected by the Designated Court against which this appeal has been preferred. In the affidavit filed before this Court it was stated that the Central Bureau of Investigation carefully scrutinised the cases of all the accused persons and took a policy decision that the accused persons in the third category could be released on bail and

consequently prosecution had no objection to the grant of bail to these persons. A

Allowing the appeal, this Court

HELD : 1. The fact-situation in which the present appeal is being examined is entirely different from that with which this Court was seized when on an earlier occasion, this very appellant was before this Court praying for his release on bail, in this very case. So what was stated then in the case of *Sanjay Dutt v. State through CBI, Bombay*, [1994] 6 SCC 86; held inapplicable, has ceased to be relevant. As the whole exercise of the Central Review Committee was pursuant to the direction of this Court in *Kartar Singh v. State of Punjab*, [1994] 3 SCC 569, referred to, and the Chief Special Public Prosecutor has filed the petition to implement the decision taken by that Committee, supplemented by the decision of the CBI, such a petition did not merit rejection. The Designated Court did not examine the matter in proper perspective. The categorisation of the accused persons in three categories being founded on relevant factors, the classification was rational. The name of the appellant being in category three, his release on bail is ordered. [367-D, G, E] B C D

2. The appellant shall furnish a bond of Rs. 5 lakhs with two sureties of like amount to the satisfaction of the Designated Court; he shall surrender his passport immediately after release; he would not hamper the on going investigation, tamper the evidence, threaten or influence the witnesses. On the happening of any one of these contingencies to the satisfaction of the Designated Court, his bail shall be cancelled. Further, he shall appear before the Designated Court as and when directed. [368-A-B] E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1196 of 1995. F

From the Judgment and Order dated 11.9.95 of the Designated Court in Bombay in Bail Application No. 19/95 in B.B.C. Case No. 1 of 1993.

Kapil Sibal, Rajender Singh, V.R. Manohar, C.V. Wadhwa, Lalit Bhasin, Man Mohan, Neeraj Sharma, Satish Manshinde, Vineet Kumar, Ms. Nina Gupta and Ms. Reshmi Kathpalia for the Appellant. G

Altaf Ahmed, Additional Solicitor General, N. Natarajan and P. Parameswaran for the Respondent/State. H

A The following Order of the Court was delivered :

Leave granted.

B This appeal has been filed against an order dated 11.9.1995 passed by the Designated Court constituted under the Terrorists and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA') rejecting the prayer for bail made on behalf of the appellant, who is facing trial for offences under TADA and Arms Act. The prayer for bail made on behalf of the appellant had been rejected earlier by the Designated Court.

C It appears that a fresh application for bail was made before the Designated Court on 28.8.1995 primarily on the grounds:

D (1) Pursuant to direction given by a Constitution Bench of this Court in the case of *Kartar Singh v. State of Punjab*, [1994] 3 SCC 569, Screening/Review Committees constituted by the State Government as well as by the Central Government had examined the cases of accused persons in custody for offences under TADA, including that of the appellant in connection with the Bombay bomb blast case.

E (2) After review of the cases of such accused persons including that of the appellant, the Chief Public Prosecutor had filed a petition before the Designated Court on 24.8.1995 saying that the State Government had no objection to the 12 accused named in the said petition including the appellant, being released on bail.

F According to Mr. Sibal, who appeared on behalf of the appellant, because of the aforesaid developments the appellant should have been released on bail irrespective of the fact that the trial is still pending.

In the case of *Kartar Singh* (supra) the Constitution Bench said in paragraph 265 :

G In order to ensure higher level of scrutiny and applicability of TADA Act, there must be a Screening Committee or a Review Committee constituted by the Central Government consisting of the Home Secretary, Law Secretary and other concerned Secretaries of the various Departments to review all the TADA cases instituted by the Central Government as well as to have a

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quarterly administrative review, reviewing the States' action in the application of the TADA provisions in the respective States, and the incidental questions arising in relation thereto. Similarly, there must be a Screening or Review Committee at the State level constituted by the respective States consisting of the Chief Secretary, Home Secretary, Law Secretary, Director-General of Police (Law and Order) and other officials as the respective Government may think it fit, to review the action of the enforcing authorities under the Act and screen the cases registered under the provisions of the Act and decide the further course of action in every matter and so on."

It was pointed out that in view of the direction given by this Court in *Kartar Singh's* case, the Designated Court itself in its order dated 24.4.1995 observed that there was much substance in the submission made by the learned Advocates appearing for the accused that it was obligatory on the part of the State as well as the Central Government to place their case before the Review Committee so constituted and obtain its report so that the Public Prosecutor could act on it. Thereafter the Maharashtra State Review Committee, after examining the cases of different accused persons in the Bombay bomb blast submitted its report to the Central Review Committee constituted pursuant to the direction given in *Kartar Singh's* case. From the copy of the minutes of the Central Review Committee, it appears that the committee consisting of the Home Secretary, the Law Secretary and the Director of CBI, examined the cases of 134 accused persons of Bombay bomb blast case on different dates between 27.6.1995 and 4.8.1995. The Committee after considering the recommendations of the Maharashtra State Review Committee and other materials in connection with different accused persons, was of the opinion that the Chief Public Prosecutor should bring to the notice of the Designated Court, the facts and circumstances in respect of different accused persons so that the Court could consider granting bail in deserving cases.

On 9.8.1995 the Designated Court in its order said that it was proper on the part of the Public Prosecutor to seek instructions and file an application before the said court mentioning the names of the accused persons and the reasons on the basis of which the State had no objection for granting them bail so that the court can reconsider their cases and grant bail on the ground that the Public Prosecutor had no objection in granting

A them bail as a matter of policy adopted by the State.

B As the investigation of the Bombay bomb blast case had been taken up by the CBI, the Chief Special Public Prosecutor on basis of the instructions received from CBI and the State Government filed the aforesaid petition on 24.8.1995. In the said petition the accused persons in the Bombay bomb blast case have been put in three categories namely (i) who had already been granted bail or discharged or had been absconding. (ii) Who had either been named by the two approvers or those who had absconded or were likely to abscond or tamper with evidence. (iii) Accused persons who could be released on bail. The names of three categories of the accused were mentioned in the Annexures enclosed to the said petition. In Annexure No. G, the names of 12 accused persons were given including the name of appellant in respect of whom it was stated that they could be released on bail.

D On 25.9.1995, this Court while issuing notice to the State Government gave a direction to file an affidavit indicating whether the cases of the accused were specifically considered by the CBI on the question of granting bail and as to whether on the basis of instruction received from CBI, a petition was filed by the Special Public Prosecutor on 24.8.1995 before the Designated Court. An affidavit has been filed on behalf of the respondent which has been sworn by the Joint Director & Special Inspector General Police, CBI, Special Task Force, New Delhi. After giving the background of the case, it has been stated in the said affidavit that in view of the order dated 9.8.1995 passed by the Designated Court saying that it would be proper on the part of the learned Public Prosecutor to seek instructions and file an application before the Court mentioning the names of the accused persons and the reasons on the basis of which the State had no objection for granting bail to them, the CBI examined in consultation with the Bombay Police cases of the accused person who were in custody in connection with the Bombay bomb blast and classified them into the categories to arrive at a list of accused for whom no objection to release them on bail could be filed before the Court. Thereafter, it has been stated:

H "Therefore, the CBI after carefully, scrutinizing the cases of all the accused in custody, took a policy decision after consulting the Bombay Police that the accused listed under Category No. III can be released on Bail and instructed the Chief Public Prosecutor to

bring it to the notice of Designated Court, that the Prosecution has no objection to grant bail to these persons. Accordingly, no objection for release on bail on the bail applications No. 19 to 30 of 1995 filed by these 12 accused listed under Category No. III is given by the CBI." A

Mr. Sibal submitted that as the case of the appellant has been reviewed by the Central Review Committee and has been examined by the CBI in terms of the direction given by the Constitution Bench of this Court in *Kartar Singh's* case (supra), the Designated Court should have directed release of the appellant on bail and there was no occasion to reject the prayer for bail on the grounds on which the said prayer had been rejected earlier. Mr. Altaf Ahmad, The learned Additional Solicitor General, who appeared for the State of Maharashtra, also took the same stand. B C

From the aforesaid narration, it is clear that the fact-situation in which the present appeal is being examined is entirely different from that with which this Court was seized when on an earlier occasion, this very appellant was before this Court praying for his release on bail, in this very case. So, what was stated then in the case of *Sanjay Dutt v. State through C.B.I., Bombay*, [1994] 6 SCC 86, has ceased to be relevant. D

It is submitted by Mr. Sibal that as the case of the appellant had been scrutinised by the Central Review Committee and the C.B.I. pursuant to the direction of the Constitution Bench of this Court in *Kartar Singh's* case (supra) following which the Chief Special Public Prosecutor was directed to file the petition praying that accused persons named in category III be released on bail, clause (b) of sub-section (8) of section 20 of TADA is not attracted. E F

In our view, as the whole exercise of the Central Review Committee was pursuant to the direction of this Court in *Kartar Singh's* case (supra) and the Chief Special Public Prosecutor had filed the petition in question to implement the decision taken by that Committee, supplemented by the decision of the CBI, such a petition did not merit rejection. The learned Designated Court did not examine the matter in proper perspective. The categorisation of the accused persons in three categories being founded on relevant factors, we are satisfied that the classification was rational. The name of the appellant being in category III, we order for his release on bail. G H

- A The appellant shall be released on bail, on his furnishing a bound of Rs. 5 (Five) lakhs with two sureties of like amount to the satisfaction of the Designated Court. The appellant shall surrender his passport immediately after release. He would not hamper the on going investigation, tamper the evidence, threaten or influence the witnesses. On the happening of any one of these contingencies to the satisfaction of the Designated Court, his
- B bail shall be cancelled. Further, he shall appear before the Designated Court as and when directed. He shall also comply with any other direction of the said Court.

The appeal is allowed accordingly.

T.N.A.

Appeal allowed.