

MAULANA NASEERUDDIN MOHD. HANEEFUDDIN

v.

STATE OF GUJARAT

JULY 17, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Prevention of Terrorism Act, 2002:

s. 32—Conspiracy to commit murder of Hindu leaders—Confession recorded by DCP—Retracted after 40 days—Bail sought on the ground that retracted confession cannot be treated as relevant substantial evidence—Rejected by special Court and High Court—On appeal, held: Considering the various factual aspects highlighted by Courts below, not a fit case to grant bail.

Prosecution case was that appellant and others, had hatched conspiracy in Ahmedabad and Hyderabad to commit murder of Hindu leaders through boys by imparting them training in arms in Pakistan. The complaint was filed for offence punishable under Indian Penal Code, 1860 and Prevention of Terrorism Act, 2002 (POTA).

The appellant was released on bail in another offence at Hyderabad on health ground. Thereafter he was produced before special POTA Court on 2.11.2004 and was remanded till 9.11.2004. A confessional statement was recorded on 7.11.2004 by the DCP. The same was retracted after 40 days. Charge sheet qua the appellant was filed in special POTA Court. The appellant moved an application for bail. However, it was rejected by Special POTA Judge. Appellant filed appeal before the High Court.

The High Court found that the special Court had elaborately dealt with various aspects of the case relating to appellant; that during the course of investigation confessional statement was recorded by DCP, an authorized officer under s. 32 of the POTA which is part of the charge sheet which was retracted after about 40 days by sending letter to the Special POTA Court through the jail authorities; that even if the confessional statement recorded under s. 32 of POTA was retracted, same can be considered as a piece of evidence at the time of deciding the bail application; that the retraction was

A not done within the stipulated time and that the Special Court was justified in refusing the bail application. Aggrieved appellant filed the present appeal.

Dismissing the appeal, the Court

B HELD: 1. Order of the Special Court, POTA as affirmed by the High Court cannot be faulted and no interference is called for. [Para 14] [389-G]

C 2. The Special POTA Court had directed the jail authority to refer to the appellant to Civil Hospital and on advice of the expert to get him examined and if required, admit him to the Civil Hospital for the period as may be prescribed by doctors. The experts have expressed the view that he can be treated as an outdoor patient by examining him at the Civil Hospital.

[Para 11] [389-D, E]

D 3. It is no doubt true that there is no time statutorily fixed during which the confessional statement can be retracted; but it has to be done within a reasonable time. [Para 12] [389-E, F]

4. Considering the various factual aspects highlighted by the trial Court and the High Court, it is not a fit case where bail can be granted to the appellant. [Para 13] [389-F]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 904 of 2007.

From the Judgment & Order dated 20.04.2006 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 1546 of 2005.

F Kamini Jaiswal, Sunita Dwivedi, Nitya Ramakrishnan, B.B. Chauhan, K. Krishna Kumar and M.A. Chinnaswamy for the Appellant.

Hemantika Wahi and Pinky Behera for the Respondent.

The Judgment of the Court was delivered by

G DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Gujarat High Court dismissing the criminal Appeal filed by the appellant. The said appeal related to the rejection of prayer for bail in connection with Crime Register No. I-6 of 2003 registered with DCB (Crime Branch) Police

H

Station, Ahmedabad.

3. Factual position in a nutshell is as follows:

An FIR was lodged on 4.4.2003 with DCB Police Station, Ahmedabad, alleging that a conspiracy was hatched by Mufti Sufiyan and Rasulkhan Party at Ahmedabad and Hyderabad to commit murder of Hindu leaders through boys by imparting them training in arms in Pakistan. The complaint was filed for the alleged commission of offences punishable under Sections 120(B), 121, 121(A), 122, 123 of the Indian Penal Code, 1860 (in short 'IPC') and Sections 25(1)(b),(c), 27 and 29 of the Arms Act, 1959 (in short 'Arms Act'). Thereafter on 19.4.2003, in pursuance of report of police Inspector, Mr. M.M. Vaghela, Sections 3(1)ab, 3(3), 4, 20, 21(2)b, 22(3)(a)(b) of Prevention of Terrorism Act, 2002 (in short 'POTA') were added. The charge sheet was filed in POTA Court qua the co-accused on 10.9.2003 wherein 39 accused were shown as arrested and 43 accused as absconding. Confessional statements (28 in number) were recorded during the remand period and statements of 43 witnesses were taken. On 21.1.2004, supplementary charge sheet was filed showing 8 accused including 7 absconding accused of first charge sheet as arrested and 7 new accused were named as wanted and 5 statements under Section 164 of Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') were recorded and confessional statements of 8 accused were attached. The appellant filed Special Criminal Application No. 377 of 2004 in the High Court for quashing of proceedings which, according to the appellant is pending till date. The appellant was released on bail in another offence at Hyderabad on health ground. Thereafter on 30.10.2004 he was arrested in connection with the present offence by the Gujarat Police. He was produced before Special POTA Court on 2.11.2004 and was remanded till 9.11.2004. Request for further remand was rejected and the appellant was sent to judicial custody. Charge sheet qua the appellant was filed in Special POTA Court on 27.1.2005. The appellant moved an application for bail being CrI. Misc. Appln. No. 762 of 2005. However, it was rejected by the learned Special (POTA) Judge, vide order dated 24.5.2005. Questioning the same, appeal was filed before the High Court.

4. Before the High Court, it was contended that there is no evidence against the present appellant except the alleged confessional statement recorded on 7.11.2004 by the DCP. The confessional statement, it was contended, is unsustainable in law and it was neither in the language known to the appellant nor was it in his hand writing. The confessional statement was recorded in Hindi. In any event, the confessional statement was retracted by

A the appellant which goes to show that the said confessional statement is concocted with the sole object to involve the appellant falsely in the offence and hence no reliance should be placed on it. The appellant never provoked or instigated any youth to go to Pakistan for Jihad training. The prime accused have not stated in their confessional statements of having been inspired by the speeches of the appellant and reference to the appellant was not done by any witness. During the course of police custody and remand no incriminating articles were recovered by the investigating agency. Serious acts in the aftermath of Godhra was done by the Rauf and not by the appellant and in the absence of any *prima facie* material there was no basis for keeping him in custody.

C 5. The stand of the State on the other hand was that there is a confessional statement of the accused recorded under Section 32 of POTA. It is the appellant who inspired young boys to take Jihad training in Pakistan. There is nothing on record to indicate that there was any coercion for giving the confessional statement. The belated retraction is nothing but afterthought.

D It was not done within the time stipulated and therefore the appellant is not entitled to be released on bail.

E 6. The High Court found that the learned special Court had elaborately dealt with various aspects of the case relating to appellant. During the course of investigation confessional statement was recorded by DCP, an authorized officer under Section 32 of the POTA which is part of the charge sheet. The same was retracted after about 40 days by sending letter to the Special POTA Court through the jail authorities. According to the High Court even if the confessional statement recorded under Section 32 was retracted, same can be considered as a piece of evidence at the time of deciding the bail application.

F Further the retraction was not done within the stipulated time. The High Court was of the view that the learned Special Court was justified in refusing the bail application.

G 7. The stands taken before the High Court were reiterated before this Court. It was submitted by learned counsel for the appellant that the FIR relates to the incidents allegedly taking place between the period from April, 2002 to April, 2003.

H 8. In the FIR name of the present appellant-Maulana Naseeruddin was not indicated. Charge sheet was filed before the POTA Court on 10.9.2003, where names of 82 persons were indicated; out of them 39 have been arrested and 43 were stated to be absconders. On 28th October, 2003 confessional

statements were recorded during appellant's remand and 43 witnesses were examined under Section 164 of the Cr.P.C. The appellant was arrested in terms of Section 151 Cr.P.C. and was granted bail in October, 2004. On 21.1.2004 a supplementary charge sheet was filed. Appellant's name was shown in Column 2 as accused No. 40 as an absconded accused in addition to those who were originally shown as absconders. The confessional statement was purportedly recorded on 7.11.2004 in Hindi. In between, several applications had been filed but there is no mention about the then so called retraction of confessional statement. On 27.1.2005, additional charge sheet had been filed.

9. It was further submitted that on retraction confession cannot be treated as a relevant substantial evidence. Further, the medical records and documents were not looked into.

10. Learned counsel for the State on the other hand submitted that initially there was a petition filed under Section 482 of Cr.P.C. before the Gujarat High Court and one SLP had also been filed and the same was subsequently withdrawn. The trial court's records have been sent back and the trial has commenced on 18.1.2006.

11. It is to be noted that the Special POTA Court had directed the jail authority to refer to the appellant to Civil Hospital and on advice of the expert to get him examined and if required, admit him to the Civil Hospital for the period as may be prescribed by doctors. The experts have expressed the view that he can be treated as an outdoor patient by examining him at the Civil Hospital.

12. It is no doubt true that there is no time statutorily fixed during which the confessional statement, if any, can be retracted; but it has to be done within a reasonable time.

13. Considering the various factual aspects highlighted by the trial Court and the High Court, we do not think this to be a fit case where bail can be granted to the appellant.

14. Order of the learned Special Court, POTA as affirmed by the High Court cannot be faulted and no interference is called for.

15. Accordingly, the appeal is dismissed. However, it would be in the interest of all concerned if the trial is completed expeditiously.

D.G.

Appeal dismissed.