

[2014] 2 S.C.R. 459

LINGARAM KODOPI

v.

STATE OF CHHATTISGARH
(Criminal Appeal No. 357 of 2014)

FEBRUARY 07, 2014

[S.S. NIJJAR AND A.K. SIKRI, JJ.]

BAIL:

Bail - Appellants accused of likely to work as conduit for paying huge amount to Naxalites by a company - Refused bail by trial court and High Court - Allegation of false implication -- Held: On the basis of orders of the Court, both appellants are on interim bail with the condition that they would not enter the State -- Other two accused, namely, General Manager and contractor of the company, have already been granted bail -- Charges are yet to be framed - One of the appellant has medical problems -- She has also to look after her children who are of tender age -- Other appellant is a young man of 24 years and he claims to be genuinely attempting to establish himself as a good citizen in the society -- There are certain circumstances, pleaded by appellants, and if ultimately established, there may be a possibility of proving the innocence of appellants -- Taking into consideration all these circumstances and going by the past history, appellants are enlarged on bail during the pendency of trial on the conditions enumerated in the judgment.

The appellants, related as nephew and aunt, were arrested by the State police and a case was registered against them for offences punishable u/ss 121, 124(1) and 120B, IPC, s. 8 (1) (2) (3) of the Chhattisgarh Jansuraksha Adhiniyam and ss. 10 and 13 of the Unlawful Activities Act, on the ground that on 8.9.2011, the police received

- A secret information that the appellants were likely to work as conduit for paying huge amount to Naxalties, which was to be paid by a Company through the co-accused, namely, its contractor and the General Manager. Both the co-accused were, however, released on bail, but the bail applications of the appellants were rejected by the trial court as well as the High Court.

- In the instant appeals, it was contended for the appellants that though the appellants were accused of collecting money for naxalites, in the entire charge-sheet and the evidence there was no material to establish any link of the appellants with naxalites. It was submitted that they were falsely implicated in past in several cases which all culminated in their acquittal and when writ petitions were filed stating their false implication and attempt of State Police to force the appellant in Crl. A. 357 of 2014 to become a Special Police Officer, they incurred wrath of police. It was further submitted that the appellant in Crl. A. 357 of 2014 became a journalist and the other appellant was a teacher in a Government School and there was no other in the family to look after her children as her husband had died. It was further submitted that she suffered serious injuries during interrogation and her health was deteriorating.

- The appellants were granted interim bail by order dated 12.11.2013 with the condition that they would not enter the State.

Disposing of the appeals, the Court

- HELD: On the basis of the orders dated 12.11.2013, both the appellants are on interim bail with the condition that they would not enter the State of Chhattisgarh during this period. Other two accused persons have already been granted bail. Charges are yet to be framed. The appellant in Crl. A. No. 358 of 2014 has medical problems.

She has lost her husband and has to look after her children who are of tender age. The other appellant is a young man of 24 years and he claims to be genuinely attempting to establish himself as a good citizen in the society. There are certain circumstances, pleaded by the appellants, and if ultimately established, there may be a possibility of proving the innocence of the appellants. Taking into consideration all these circumstances and going by the past history, the appellants shall be enlarged on bail during the pendency of trial on furnishing personal securities in the sum of Rs. 50,000/- with two sureties each of the like amount, to the satisfaction of the trial court, with the conditions as enumerated in the judgment. [para 14-15] [468-E-H; 469-A]

CRIMINAL APPELLATE JURISDICTION : Criminal appeal No. 357 of 2014

From the judgement and order dated 08.07.2013 of the High Court of Chhattisgarh at Bilaspur in MCRC No. 2806 of 2013.

WITH

Criminal Appeal No. 358 of 2014.

Colin Gonsalves, Prashant Bhushan, Ramesh K. Mishra, Govind Jee, Anil Shukhla, Jyoti Mendiratta for the appellant.

V.A. Mohta, Aniruddha P. Mayee, Advocate for the respondent.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Leave granted.

2. Both these appeals arise out of common order dated 8.7.2013 passed by the High Court of Chhattisgarh, whereby applications for bail preferred by these two appellants were rejected.

A 3. Appellants are related to each other. The appellant
 B Lingaram Kodopi is the nephew of the appellant Soni Sori
 C (Lingaram's father and Soni Sori's husband were the real
 D brothers). Both these appellants have been implicated under
 E Sections 121, 124(1) and 120B of the Indian Penal Code as
 F well as Section 8 (1) (2) (3) of the Chhattisgarh Jansuraksha
 Adhinyam and Sections 10 & 13 of the Unlawful Activities of
 the Act. For the alleged offence under the aforesaid provisions
 crime No. 26/2011 with Police Station Kuakonda district
 Dantewada, Chhattisgarh is registered against them alongwith
 certain other persons. Both have been arrested in connection
 with the aforesaid case.

D 4. In nut-shell the prosecution case is that on 8.9.2011, the
 E concerned police received secret information that these
 F appellants are likely to work as conduit for paying huge amount
 to the Naxalties, which was to be paid by Essar Company
 through co-accused B.K. Lala, a contractor of the said
 company, whose plant was operating in the naxal affected
 areas. The concerned police conducted a raid when these two
 appellants were in the process of receiving the amount of Rs.
 15 lakhs from B.K. Lala at village Palnar weekly market at 1.00
 p.m. on 9.9.2011. When the police party reached, a
 pandemonium took place and taking advantage thereof Soni
 Sori successfully escaped. However, Lingaram Kodopi and co-
 accused B.K. Lala were arrested from the spot. The appellant
 Soni Sori was also arrested afterwards on 12.10.2011 in Delhi.

G 5. As per the prosecution, in the present case different
 H aspects of naxal movements had appeared wherein these
 naxalites receiving huge amount of money from Corporate
 groups to further their activities of waging war against the
 country. Shri B.K. Lala, Accused No. 1 in this case is a
 contractor of Essar Company who was supposed to pay money
 to these naxalites. Both the appellants were made conduits to
 receive money from B.K. Lala so that they could hand it over
 to the concerned naxalite persons. Apart from B.K. Lala and

the two appellants, one DVCS Verma who is the General Manager of Essar Company has also been implicated in the said case.

6. These two other accused persons, viz. Shri B.K. Lala as well as Shri DVCS Verma were also arrested. However, both have since been enlarged on bail, Shri B.K. Lala who was arrested on 9.9.2011 was granted statutory bail on 4.2.2012, on the ground that charge-sheet was not filed until after 90 days from the date of registration of FIR. Shri DVCS Verma was granted bail on 3.1.2012. These two appellants however were denied bail by the Trial Court and, as mentioned above, even the High Court has rejected their bail applications. From the perusal of the order of the High Court it becomes clear that the High Court has mainly been influenced by the serious nature of crime allegedly committed by these appellants. The High Court also took note of the statements of certain witnesses which were recorded during investigation and went through the case diary. As per the High Court since direct evidence was available against these accused persons showing their complicity, there was a prima facie evidence against the appellants to the effect that they were found to be working as conduit between Essar Company through B.K. Lala and the naxalites.

7. In support of plea for bail on behalf of Soni Sori, Mr. Colin Gonsalves, learned Senior Counsel made detailed submissions, with lot of emphasis that the appellants were falsely implicated in this case because of previous animosity with the police authorities, of which they had become the victims over a period of time without any fault of theirs. It was argued that though the appellants were accused of collecting money for naxalites, in the entire charge-sheet and the evidence collected, there was no material which could show any link of these appellants with the naxalites. Mr. Gonsalves referred to the details of the case which was foisted against him by the police on previous occasions and in all these cases she was

A acquitted by the courts. According to him, the appellant Soni Sori had shown courage in filing Writ Petition (Crl.) No. 206 of 2011 in the High Court of Chhattisgarh which had become the cause of anguish for Chhattisgarh police. In that Writ Petition she stated that she was tribal woman from Village Sameli in B Dantewada district of Chhattisgarh. Her nephew Mr. Lingaram Kodopi on 31.8.2009 was kidnapped by the Chhattisgarh police and forced to become a Special Police Officer (SPO). She, therefore, through the brother of Lingaram, organized and filed a Writ Petition (habeas corpus). No. 5469 of 2009 before the C Chhattisgarh High Court as a result of which Mr. Lingaram was released from custody. He thereafter became a journalist and participated in several TV programmes on the massacres and killings taking place in Chhattisgarh and he also took photographs of the houses of the tribals that were burnt by the D Chhattisgarh police and these photographs were printed in magazines. As a consequence she incurred the wrath of police who started filing series of false cases against the appellant Soni Sori. Details of these cases are given in Para 8 of the 'Synopsis' to the Special Leave Petition.

E 8. Mr. Gonsalves further submitted that in September, 2011, Tehelka Magazine did a sting operation of the conversation which took place between the appellant and constable Mankar of the Kirandul police station, in which constable Mankar admitted in a phone conversation that the F appellant, Soni Sori and her nephew Lingaram Kodopi were being framed in the Essar case, and that Lingaram Kodopi was picked up from the house and not from the bazaar. The appellants have filed the copy of the CD with transcription and excerpts of the conversation are reproduced in the SLP paper G book as well. On that basis his submission was that this sting operation was enough to show that the appellants were framed falsely in the entire case.

H 9. To buttress this submission of false implication, Mr. Gonsalves also pointed out that the appellant Soni Sori who

was a teacher in a Government School had in fact been attending the school which was clear from the attendance register filed as Annexure P-1 to the SLP. Mr. Gonsalves also highlighted the atrocity committed on her by the police during her custody, particularly on 8.10.2011. He also submitted that because of the torture she suffered at the hands of police during interrogation on that day, her health deteriorated and she had to be admitted into the Dantewada district hospital at 9.30 a.m. on 10.10.2011. When she was taken to the Court on that day at 1.45 p.m. she was not even in a position to stand and walk. The police informed the Magistrate by falsely stating that she had suffered a fall in the bathroom. From the court she was taken to Jagdalpur Jail from where she was taken to Maharani hospital from Jagdalpur and admitted there at 8.00 p.m. On 12.10.2011 she was referred to Bhim Rao Ambedkar Medical College, Raipur.

10. Mr. Gonsalves also referred to the proceedings in Writ Petition (Crl.) No. 206 of 2011 pending in this Court wherein the aforesaid worsening health condition of Soni Sori was explained and on 20.10.2011 this Court directed that she be taken to Kolkata and admitted in Nil Ratan Sarkar Medical College and Hospital, Kolkata. The Court also observed, while giving this direction, that the injuries sustained by her do not prima facie appear to be simple as had been projected by the Chhattisgarh Police. After the examination of Soni Sori by the aforesaid hospital in Kolkata and receiving the report from the said hospital, on 2.5.2012 this Court directed the Director of All India Institute of Medical Sciences (AIIMS) to constitute a Board of Directors, which would include the Head of the Department of Gynaecology, Endocrinology and the Cardiac Department, to examine Ms. Soni Sori, as to her physical condition and, thereafter, to recommend the treatment to be undergone in AIIMS itself. At AIIMS she was treated for "vulval excoriations and scabies" and thereafter transferred to Raipur Central Prison and then to Jagdalpur Central Prison.

A 11. Mr. Gonsalves also argued that even other family
 members of Soni Sori have been tortured by the police.
 According to him, when Soni Sori was in custody her husband
 Anil Futane was arrested in July, 2010 and he suffered a
 paralytic stroke while in custody as a result of torture. There are
 B in all four cases in which he was charged for maoist. His last
 acquittal order came on 1.5.2013 and thereafter he died in
 mysterious circumstances on 1.8.2013. He thus, submitted that
 after the death of her husband there was nobody in the family
 to look after her children whose condition had become
 C miserable in the absence of any adult person to take care of
 them.

12. Mr. Prashant Bhushan, learned Counsel appearing for
 Lingaram Kodopi, in addition, highlighted the circumstances
 under which his client became the target of Chhattisgarh Police
 D which had forced him to become a Special Police Officer
 (SPO). This was the reason for Soni Sori to file Writ Petition
 (CrI.) 206 of 2011. Mr. Bhushan also sought to narrate in detail
 the same kind of witch hunting, resorted to by the police qua
 Lingaram, filing series of false cases against him as well and
 E he was acquitted in all these cases.

13. Mr. V.A. Mohta, learned Senior Counsel appearing for
 the State submitted that by well reasoned order, the High Court
 had rejected the bail application of the appellants herein. He
 F further submitted that as per the prosecution cases, on previous
 date confidential information was received from the IB that the
 appellants are going to receive money from B.K. Lala on
 10.9.2011. B.K. Lala as well as Lingaram were nabbed on the
 spot whereas Soni Sori escaped. He also submitted that the
 G main reason for acquittal of these appellants in other cases was
 that the witnesses do not come to Court for deposition as they
 fear threat to their own life. Though he did not deny that the bail
 was already granted to B.K. Lala and DVCS Verma, he
 however, submitted that if because of not handling the cases
 properly they were granted bail, same benefit should not be
 H

extended to the appellants.

14. Since in the present appeals, we are only concerned with the issue of grant of bail to the appellants pending trial, it may not be necessary to deal with the arguments of the Counsel for the parties on either side, in detail, for obvious reasons. We would like to refer to the orders dated 12.11.2013 passed for these proceedings whereby interim bail was granted to both the appellants. Relevant portions of the said order reads as follows:

"It has been stated by the learned Counsel for the petitioners that the petitioner-Lingaram Kodopi - in Special Leave Petition (Criminal) No. 7898 of 2013 has been in custody since 9th September, 2011 and the petitioner - Soni Sori in Special Leave Petition (Criminal) No. 7913 of 2013 has been in custody since 4th October, 2011. Since it is going to take some time before a responsible officer can be present in Court in assisting the examination of the record, we are of the opinion that it would be unjust to continue the incarceration of the petitioners during the pendency of the applications for bail. We are also mindful of the fact that Soni Sori, petitioner in Special Leave Petition (Criminal)No. 7913 of 2013 has been acquitted in five earlier cases. Similarly, petitioner Lingaram Kodopi in Special Leave Petition (Criminal) No. 7898 of 2013 was also acquitted in the earlier matter. It has also been stated that B.K. Lala, co-accused has also been granted bail on 4th February, 2012. In these circumstances, we are of the opinion that it would be appropriate to direct that the petitioners be released on interim bail during the pendency of the bail applications. However, keeping in view the submissions made by Mr. V.A. Mohta, learned Senior Counsel appearing for the State of Chhattisgarh, it would be in the interests of justice to direct that the petitioners shall not enter the State of Chhattisgarh during the period in which they are granted interim bail. It is ordered accordingly.

A At this stage, it has been brought to out notice by Mr.
Colin Gonsalves, learned Senior Counsel appearing for the
petitioner in Special Leave Petition (Criminal) No. 7913
of 2013 and Mr. Prashant Bhushan, learned Counsel
B appearing for the petitioner in Special Leave Petition
(Criminal) No. 7898 of 2013 that the petitioners have not
met their families for a long time and it would be only
humane if they are permitted to meet their families before
they travel to Delhi.

C In view of the above, we direct the concerned Senior
Superintendent of Police to depute some responsible
police officers to escort the petitioners to their respective
villages so that they can meet their families for a period
of 24 hours. On the following day, the petitioners shall be
escorted to Delhi. They shall be permitted to reside in any
D locality of their choice in Delhi. Once the petitioners reach
Delhi, they are directed to report to the in-charge of the
local Police Station once a week. They shall report to the
in-charge of the local Police Station every Sunday at 11.00
a.m."

E 15. On the basis of the aforesaid orders, both the
appellants are on bail with the condition that they would not
enter the State of Chhattisgarh during this period. Other two
accused persons have already been granted bail. Charges are
F yet to be framed. Soni Sori is having medical problems as well.
There are certain circumstances, pleaded by the appellants,
and if ultimately established, there may be a possibility of
proving the innocence of the appellants. Soni Sori has lost her
husband and has to look after her children who are of tender
G ages. Lingaram Kodopi, who is a young man of 24 years,
claims to be genuinely attempting to establish himself as a
good citizen in the society. Taking into consideration all these
circumstances cumulatively and going by the past history, as
demonstrated by both the Counsel for the appellants, we are
H of the opinion that the appellants deserve to be enlarged on

bail during the pendency of trial on furnishing personal securities in the sum of Rs. 50,000/- with two sureties each of the like amount, to the satisfaction of the Trial Court.

16. At the same time, we agree with Mr. Mohta that there should be some stringent conditions for grant of bail to the appellants. Accordingly, we order that it would be subject to the condition that the appellants shall report to the concerned police station once a week i.e. at 10.30 a.m. on every Monday to show their presence. They would be permitted to take along their lawyer. Further, they shall appear before the Trial Court on each and every date of hearing and shall not seek exemption except when on a particular date they are unable to appear because of the reasons beyond their control, like illness etc. They shall also inform the Court about their place of stay/ residence and disclose to the Court as to when there is a change of residence. Further, they shall not leave the station or travel abroad without the prior permission of the trial court.

17. These appeals are disposed of in the aforesaid terms.

R.P.

Appeals disposed of.