

704

SUPREME COURT CASES

(2021) 4 SCC

(2021) 4 Supreme Court Cases 704

2J

(BEFORE L. NAGESWARA RAO AND S. RAVINDRA BHAT, JJ.)

SUDESH KEDIA

.. Appellant;

Versus

UNION OF INDIA

.. Respondent.

Criminal Appeals Nos. 314-15 of 2021[†], decided on April 9, 2021

A. Terrorism and Organised Crime — Unlawful Activities (Prevention) Act, 1967 — S. 43-D(5), proviso — Bail — Mandate of provision and relevant considerations — Explained

— As per mandate of S. 43-D(5), a person shall not be released on bail if the court is of the opinion that there are reasonable grounds for believing that the accusations made are prima facie true — Thus, while considering the grant of bail under S. 43-D(5), Court has to apply its mind to examine the entire material on record for the purpose of satisfying itself, whether a prima facie case is made out against the accused or not

B. Terrorism and Organised Crime — Unlawful Activities (Prevention) Act, 1967 — S. 43-D(5), proviso — Expression “prima facie true” — Meaning of

— Held, it would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence — It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted — Words and Phrases — “Prima facie true”

C. Terrorism and Organised Crime — Unlawful Activities (Prevention) Act, 1967 — S. 43-D(5) r/w Ss. 17/18/21 — Bail — Allegation of terror funding — Accused allegedly paid levy/extortion amount to certain terrorist organisation — Held, payment of extortion money does not amount to terror funding, particularly when other members of the terrorist organisation concerned were found to be systematically collecting extortion amounts from businessmen in certain areas

D. Terrorism and Organised Crime — Unlawful Activities (Prevention) Act, 1967 — S. 43-D(5), proviso — Bail — Denial of — When not justified — Appellant charged with offences under S. 120-B r/w Ss. 414, 384, 386 & 387 IPC, Ss. 17/18/21 UAPA, Ss. 25(1-B)(a) & 26/35 of the Arms Act and S. 17(1)(2) of the Criminal Law Amendment Act — As per FIR, accused were functionaries of a terrorist gang TPC and they were extorting levy from coal traders, transporters and contractors — Main accusations made against

[†] Arising out of SLPs (Crl.) Nos. 6259-60 of 2020. Arising from the Judgment and Order in *Sudesh Kedia v. Union of India*, 2020 SCC OnLine Jhar 567 [Jharkhand High Court, Criminal Appeal (DB) No. 187 of 2020, dt. 24-6-2020]

SUDESH KEDIA v. UNION OF INDIA (*Nageswara Rao, J.*)

705

the appellant were that he conspired with members of terrorist organisation, paid levy/extortion amount to the terrorist organisation and an amount of Rs 9,95,000 also seized from his house

a — Mere payment of extortion money by the appellant, held, does not amount to terror funding, particularly when other members of the terrorist organisation found systematically collecting extortion amounts from businessmen in certain areas — Appellant also carrying on transport business in the area of operation of the organisation and material also indicated that he paid money to the members of the TPC for smooth running of his business — Hence, prima facie, there held no material to conclude that the appellant conspired with the other members of the TPC and raised funds to promote the organisation

c — Allegation of the appellant meeting the members of the terror organisation also held not material, when the appellant himself revealed in his statement recorded under S. 164 CrPC that he was summoned to meet other members of the organisation in connection with the payments made by him — Recovery of amount of Rs 9,95,000 from the house of the appellant also held not material, because of this amount being accounted for by the appellant by stating that the amount was withdrawn from the bank to pay salaries to his employees and other expenses — Hence, at stage of considering bail, amount seized from the appellant declined to be treated as proceeds from terrorist activity, particularly when there was no allegation that appellant was receiving any money — Resultantly, orders of denial of bail by the courts below held not justified and set aside and, resultantly, appellant directed to be released on bail subject to the satisfaction of the Special Court — Penal Code, 1860 — S. 120-B r/w Ss. 414, 384, 386 & 387 — Arms Act, 1959 — Ss. 25(1-B)(a) & 26/35 — Criminal Law Amendment Act, S. 17(1)(2) (Paras 11 to 15)

e *NIA v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383, *followed*
Sudesh Kedia v. Union of India, 2020 SCC OnLine Jhar 567, *reversed*

Appeals allowed

SK-D/67622/CR

Advocates who appeared in this case :

f C.A. Sundaram, Senior Advocate, for the Appellant;
Sairica Raju, Additional Solicitor General, for the Respondent.

Chronological list of cases cited

on page(s)

- 2020 SCC OnLine Jhar 567, *Sudesh Kedia v. Union of India (reversed)* 706a, 707b, 709g-h
- (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383, *NIA v. Zahoor Ahmad Shah Watali* 707c, 708a-b

g The Judgment of the Court was delivered by

L. NAGESWARA RAO, J.— The appellant is accused of committing offences under Sections 120-B/414/384/386/387 of the Penal Code, 1860 (“IPC”) read with Sections 17/18/21 of the Unlawful Activities (Prevention) Act, 1967 along with Sections 25(1-B)(a)/26/35 of the Arms Act and Section 17(1)(2) of the Criminal Law Amendment (CLA) Act. The application filed for grant of bail was dismissed by the Judicial Commissioner-cum-Special

h

Judge, NIA at Ranchi on 14-2-2020. The High Court dismissed¹ the criminal appeal filed by the appellant and upheld the order dated 14-2-2020 of the Special Judge. Therefore, the present appeal.

2. On a complaint made by Shri Ramadhari Singh, Sub-Inspector, Police Station Simariya, FIR No. 02/2016 was registered on 11-1-2016 at Police Station Tandwa under Sections 414, 384, 386, 387, 120-B IPC, Sections 25(1-B)(a) & 26/35 of the Arms Act and Section 17(1)(2) of the CLA Act against Vinod Kumar and others. The allegation against the persons named in the FIR is that they were operatives/functionaries of a terrorist gang TPC and they were extorting levy from coal traders, transporters and contractors. After investigation a charge-sheet was filed on 10-3-2016 in the Court of Chief Judicial Magistrate at Chatra against Vinod Kumar Ganjhu.

3. In exercise of powers conferred under Section 6(5) and Section 8 of the National Investigation Agency Act, 2008, the Central Government directed NIA to take up investigation in view of the gravity of the offences involving seizure of arms and ammunitions and huge amounts of cash. The members/operatives of Tritiya Prastuti Committee (“TPC”), according to the charge-sheet, have been extorting money from businessmen in Amrapali and Magadh coal mining areas and they have amassed movable and immovable properties from the said money. They have also been obstructing smooth supply of transport of coal.

4. During investigation, the statement of the appellant was recorded under Section 164 CrPC. The appellant stated that Subhan Miyan contacted him and demanded money for the smooth functioning of the business of the transport company i.e. M/s Esskay Concast and Minerals Pvt. Ltd. He further stated that he had a meeting with A-5, A-10, A-11 and A-14. There was constant demand of payment of levy, he admitted payment of huge amount of money.

5. The National Investigation Agency submitted a supplementary charge-sheet against A-1 to A-16 on 21-12-2018 in which the modus operandi of collecting of levy from contractors, traders, transporters, etc. was given. It was mentioned in the supplementary charge-sheet that coal traders/transporters were paying cash to Shanti Sah Sanchalan Samiti, Central Coalfield Ltd., village committees and TPC operatives for carrying on their business smoothly.

6. On further investigation, a second supplementary charge-sheet was filed on 10-1-2020 in which the appellant was shown as A-19. According to the supplementary charge-sheet the appellant is engaged in transporting of coal on behalf of GVK Power and Godavari Commodities. He had attended meetings with TPC leaders and had paid levy to TPC leader Akraman (A-14), CCL employees and village committee members from his current account. In view of the payments made by him an inference was drawn that the appellant colluded with the members of the terrorist gang (TPC) and was a party to a criminal conspiracy to raise funds for a terrorist gang. Further, an amount of Rs 9,95,000 (Rupees nine lakh and ninety-five thousand only) was seized from his residential premises. The appellant was apprehended on 10-1-2020.

¹ *Sudesh Kedia v. Union of India*, 2020 SCC OnLine Jhar 567

7. The appellant moved an application for bail in the Court of Judicial Commissioner-cum-Special Judge, National Investigation Agency at Ranchi. The submission made on behalf of the appellant that he was a victim and he was forced to pay the levy as demanded by the organisation was not accepted by the Special Court. The Special Court was convinced with the contention of the prosecution that apart from the meeting with the members of the terrorist organisation, the appellant had also paid huge amount of money to them.

8. The appeal filed against the judgment of the Special Court was dismissed by the High Court on 24-6-2020¹. In view of the admissions of the appellant that he had been paying extortion money, it was held that he contributed to funding of the terrorist organisation. The High Court observed that there is material on record to show that he was in constant touch with the members of the terrorist organisation in order to run his business. Prima facie, the High Court was satisfied that it is a case of terror funding. Referring to Section 43-D(5) of the UA (P) Act, and relying upon the judgment of this Court in *NIA v. Zahoor Ahmad Shah Watali*², the High Court concluded that the accusations against the appellant are prima facie made out disentitling the appellant for grant of bail.

9. We have heard Mr C.A. Sundaram, learned Senior Counsel for the appellant and Mr Sairica Raju, learned Additional Solicitor General for the respondent. It was submitted by the appellant that the only accusation is payment of illegal levy to TPC for the smooth functioning of the business. The appellant is not a member of TPC and cannot be accused of terror funding. On the other hand, there was no way he could carry on smooth transportation of coal without meeting the demand of the terrorist organisation. The meeting that the appellant had with the members of the organisation could not have been avoided and it was only for the purpose of his complying with the demand made by the members of the organisation. It was submitted on behalf of the appellant that a perusal of the charge-sheet and the other material on record would not disclose any offence under Section 17 of the UA (P) Act as it cannot be said that by any stretch of imagination that the appellant has raised funds for the terrorist organisation.

10. According to the prosecution, the appellant was providing financial support to TPC and the material gathered during investigation discloses that the appellant has committed offences under Section 17 of the UA (P) Act. That huge amount of money was paid by the appellant to protect his business which amounts to raising funds to the terrorist organisation. It was submitted that the judgment of the High Court does not warrant any interference as the appellant was in constant touch with the members of the organisation (TPC) which shows his involvement with the terrorist gang.

11. Section 43-D(5) mandates that a person shall not be released on bail if the court is of the opinion that there are reasonable grounds for believing that the accusations made are prima facie true. Apart from the other offences, the appellant is accused of committing offences under Sections 17, 18 and 21

¹ *Sudesh Kedia v. Union of India*, 2020 SCC OnLine Jhar 567

² (2019) 5 SCC 1 : (2019) 2 SCC (Cri) 383

of the UA (P) Act. The appellant is accused of providing funds to a terrorist organisation. According to the prosecution, he has entered into a conspiracy with the other members of the organisation to strengthen and promote the activities of the organisation. Further, an amount of Rs 9,95,000 (Rupees nine lakh and ninety-five thousand only) was seized from the appellant's house, making him liable for punishment under Section 21 of the Act.

12. In *NIA v. Zahoor Ahmad Shah Watali*², this Court considered the parameters for exercise of the power under Section 43-D(5), held as follows: (SCC p. 24, para 23)

“23. By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is “not guilty” of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is “not guilty” of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is “prima facie” true. By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is “prima facie true”, as compared to the opinion of the accused “not guilty” of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.”

13. While considering the grant of bail under Section 43-D(5), it is the bounden duty of the Court to apply its mind to examine the entire material on record for the purpose of satisfying itself, whether a prima facie case is made

a out against the accused or not. We have gone through the material on record and are satisfied that the appellant is entitled for bail and that the Special Court and the High Court erred in not granting bail to the appellant for the following reasons:

b **13.1.** A close scrutiny of the material placed before the Court would clearly show that the main accusation against the appellant is that he paid levy/extortion amount to the terrorist organisation. Payment of extortion money does not amount to terror funding. It is clear from the supplementary charge-sheet and the other material on record that other accused who are members of the terrorist organisation have been systematically collecting extortion amounts from businessmen in Amrapali and Magadh areas. The appellant is carrying on transport business in the area of operation of the organisation. It is alleged in the second supplementary charge-sheet that the appellant paid money to the members of the TPC for smooth running of his business. Prima facie, it cannot be said that the appellant conspired with the other members of the TPC and raised funds to promote the organisation.

c **13.2.** Another factor taken into account by the Special Court and the High Court relates to the allegation of the appellant meeting the members of the terror organisation. It has been held by the High Court that the appellant has been in constant touch with the other accused. The appellant has revealed in his statement recorded under Section 164 CrPC that he was summoned to meet A-14 and the other members of the organisation in connection with the payments made by him. Prima facie, we are not satisfied that a case of conspiracy has been made out at this stage only on the ground that the appellant met the members of the organisation.

d **13.3.** An amount of Rs 9,95,000 (Rupees nine lakh and ninety-five thousand only) was seized from the house of the appellant which was accounted for by the appellant who stated that the amount was withdrawn from the bank to pay salaries to his employees and other expenses. We do not agree with the prosecution that the amount is terror fund. At this stage, it cannot be said that the amount seized from the appellant is proceeds from terrorist activity. There is no allegation that the appellant was receiving any money. On the other hand, the appellant is accused of providing money to the members of TPC.

e **14.** After a detailed examination of the contentions of the parties and scrutiny of the material on record, we are not satisfied that a prima facie case has been made out against the appellant relating to the offences alleged against him. We make it clear that these findings are restricted only for the purpose of grant of bail to the appellant and the trial court shall not be influenced by these observations during trial.

f **15.** For the aforementioned reasons, the judgment¹ of the High Court is set aside and the appellant is directed to be released on bail subject to the satisfaction of the Special Court. The appeals are allowed, accordingly.

g

h _____
1 *Sudesh Kedia v. Union of India*, 2020 SCC OnLine Jhar 567