

Mool Chand

Vs

State Through The Director, CBI, Scope Building, Lodhi Complex, New Delhi

Special Leave Petition (Criminal) No. 1917 of 1991

(S. R. Pandian JJ)

04.07.1991

ORDER

1. The special leave petition is directed against the order of the Designated Court, Delhi dated June 3, 1991 rejecting the application for regular bail to Mool Chand Shah, the petitioner herein and in the alternative releasing him on interim bail.
2. The petitioner is an accused in FIR No. 53 of 1991 of Chandni Mahal Police Station, Delhi registered under Sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and under Section 8(1) of the Foreign Exchange Regulation Act (FERA). The prosecution is as follows :

The petitioner is an unauthorised dealer illegally dealing in foreign exchange - commonly known as hawala transaction and he has been instrumental in transferring huge sums received from different sources to the members of militant outfits of Jammu & Kashmir for use in terrorist and disruptive activities. It is stated that on receipt of a secret information, a trap was laid by Delhi Police on March 25, 1991 resulting in the apprehension of accused Ashfaq Hussain Lone from whom three incriminating letters, one addressed to Master Ahsan Dar, Commander-in-Chief of Hizbul Mujahedin, a banned terrorist organisation of Kashmir Valley and another addressed to one Mashud containing information about making arrangements for a house in Srinagar and for recruiting people in the valley and the third one addressed to Firdaus containing secessionist messages, formation of militant groups etc. were seized. At the time of the apprehension, accused Ashfaq Hussain Lone shouted slogans 'Pakistan Zindabad', 'Azad Kashmir Zindabad' etc. the case FIR No. 53 of 1991, referred to above, was registered only after his arrest on March 25, 1991. In pursuance of his statement, 23 drafts for a sum of Rs 15.50 lakhs and a sum of Rs 50,000 in cash were also recovered which amounts are stated to have been given to accused Ashfaq Hussain Lone by accused Shahbuddin Ghauri, a research student of JNU who in turn is stated to have received the same from Dr Ayub Thakur of U.K. through illegal means of hawala transaction. Accused Shahbuddin Ghauri was also arrested by Delhi Police on March 27, 1991 and on his pointing out, another accused Shambhu Dayal Sharma at the rate Guptaji who is stated to have delivered the sum of Rs 16.27 lacs, was also arrested on April 1, 1991. On the disclosure of accused Shambhu Dayal Sharma to the effect that the petitioner, Mool Chand Shah was the person through whom he started transactions at Delhi and passed on the money to different people including to accused Shahbuddin Ghauri which were recovered from Ashfaq Hussain Lone while being taken to Kashmir for terrorist activities, Delhi

Police sent a requisition to Bombay on April 13, 1991 for apprehending petitioner/accused Mool Chand Shah who was accordingly arrested at Bombay on April 16, 1991 and was brought to Delhi on April 23, 1991 on a production warrant issued by the court. The petitioner was kept in police custody on court's order up to May 10, 1991 for interrogation and thereafter was sent to judicial custody up to June 29, 1991. (It is now stated at the bar that the remand of the petitioner is further extended.) The investigation of this case was taken over by the CBI on April 20, 1991. The CBI conducted simultaneous searches at 20 places including the place of sub-bankers of hawala from where the accused persons used to collect the money for making payments to different persons and also at the places where the final deliveries were made. According to the prosecution, a huge amount of Rs 93,52,755 in cash and foreign exchange worth Rs 3,69,307, Indira Vikas Patra worth Rs 10,50,000 and gold bars worth Rs 12 lakhs were recovered and the investigation, connecting the terrorist links of the places from where the money had been kept/delivered by the accused persons in this case is continuing not only in India but also abroad and that the investigation is likely to take sufficient time to unearth the whole conspiracy behind the said heinous crime of funding terrorists for illegal terrorists and secessionist activities.

3. Mr Jethmalani, learned senior counsel appearing on behalf of the petitioner strenuously contended that there is absolutely no evidence worth mentioning disclosing the involvement of the petitioner in funding of terrorist activities and that the investigating agencies have not disclosed the precise allegations and particulars either in the first information report or in the remand report connecting the petitioner with the offence in question and that even assuming but not conceding that the petitioner had been dealing with money transaction with any one of the accused that would not be a sufficient ground to hold that the petitioner in any way had any connection with the terrorist activities even remotely or had knowledge of the alleged terrorist activities of the other accused. In continuation of his submission, it has been stated that the petitioner has not made any confession to the police officer within the ambit of Section 15 of TADA Act from which presumption as to offence under Section 3 could be drawn as contemplated under Section 21, sub-section (1)(c) of the TADA Act. According to him, the arrest and detention of the petitioner as well the non-disclosure of the full particulars of the offence or the grounds for his arrest are in violation of Article 22 of the Constitution of India and Section 50(1) of the Code of Criminal Procedure and that this non-disclosure of the particulars has deprived him of meeting this case effectively. In support of his contention, the learned counsel places reliance on two decisions, namely *Bimal Kaur Khalsa v. Union of India* [1988 Cri LJ 869 : AIR 1988 P & H 95 : (1988) 93 Punj LR 189] and *Selvanathan alias Reghavan v. State by Inspector of Police* [1988 LW (Cri) 503] to which I was a party. Finally, he drew the attention of this Court to paragraph 6 of the impugned order wherein the Designated Court has made the following observations :

"There is consideration substance in the defence plea that unless it is shown that the applicant/accused knew the identity of persons being terrorist or disruptionists, mere transfer of funds by way of hawala transaction cannot being his case under Section 3(3) of TADA Act, 1987, as such transaction cannot be treated as amounting to rendering of assistance, financially or otherwise, to terrorist or disruptionist."

and contended that in the face of the above observation, the petitioner is entitled for bail and more so when it is the admitted case of the prosecution that the petitioner was traced on the disclosure of accused Shambhu Dayal Sharma who was traced on being pointed out by Shahbuddin Ghauri who

was traced on the strength of the statements of Ashfaq Hussain Lone.

4. The learned Additional Solicitor General refuted the arguments of Mr Jethmalani stating that Shambhu Dayal Sharma who had delivered a sum of Rs 16.27 lakhs to Shahbuddin Ghauri was arrested on April 1, 1991 and that on the strength of the statement of disclosure made by Shambhu Dayal Sharma to the effect that the petitioner was the person through whom he started transaction at Delhi and passed on the money to different people including the accused Shahbuddin Ghauri which amounts were recovered from Ashfaq Hussain Lone while being taken to Kashmir for terrorist activities and that the offence has got an international ramification and that some more time would be required for completing the investigation and as such the release of the petitioner on bail will be a hindrance to the further investigation which has to be intensively carried on not only in India but also abroad. According to him, there is a deep-rooted conspiracy of terrorist activities and the petitioner is very much involved in it.

5. I bestowed my deep and anxious consideration to the submissions made by both the parties. As the matter is under investigation, I am not inclined to express any opinion on the merits or demerits of the case. Suffice to say that the investigation has to go a long way and hence sufficient time will be required for the investigating agencies to complete the investigations. Further, having regard to the seriousness of the allegations levelled against the petitioner, as pointed out by the Designated Court, the release of the petitioner on bail at this crucial stage may frustrate the effort of the investigating agencies in collecting evidence. Hence his bail application is dismissed at this stage. However, the investigating agencies are directed to expedite and complete the investigation as expeditiously as possible. The petitioner is permitted to renew the application for bail after two months.

6. The special leave petition is dismissed accordingly.

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