

Asifali Alia Montu Badeali Saiyed

Vs

State of Gujarat

Slp (Crl.) No. 1551 of 1993

(R. M. Sahai, S. Ratnavel Pandian JJ)

11.03.1994

ORDER

S. RATNAVEL PANDIAN, J. -

1. This petition is filed by the petitioner, Asifali alias Montu Badeali Saiyed questioning the order of the High Court of Gujarat disposing the application filed under Article 227 of the Constitution of India challenging the order of the Metropolitan Magistrate granting permission to the Investigating Officer to include the provisions of Section 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 against the petitioner. The brief facts of the case are as follows :

2. The Petitioner was arrested in connection with C.R. No. 121 of 1993 registered at Karang police station at Ahmedabad on April 21, 1993 on the allegations that one of the accused under the said complaint has escaped from police custody while he was being taken to the Court of Metropolitan Magistrate, on being abetted by the petitioner. Though, initially the case was registered only under Sections 120-B, 224 and 225 of the Indian Penal Code, the provisions of the TADA Act were included on April 23, 1992 by Shri K. C. Bawa, Inspector of Police, DCB, Ahmedabad city. The relevant portion of the averments made in the application for inclusion of the provisions of TADA Act is as follows :

"....Therefore, it appears that their this act is committed with the intention only to spread terrorism. This offence becomes offence under Sections 3-4 of TADA Act besides above sections. Therefore, it is requested to allow addition of Sections 3-4 of TADA Act in the FIR of above offence."

3. As the case was initially registered only for bailable offences and thereafter the provisions of TADA were added, we issued notice to the Inspector of Police to explain as to under what circumstances, the TADA provisions were invoked. The Inspector of Police filed his affidavit stating thus :

"The answering-respondent also submitted a report to the Police Commissioner, Ahmedabad city through the Deputy Commissioner of Police, Crime Branch, Ahmedabad, for permission to add charges under Sections 3 and 4 of TADA against the petitioner. The issue was discussed with the Deputy Commissioner of Police, Crime Branch, who, further discussed the matter with the Public Prosecutor, Shri R. K. Shah and thereafter the application for inclusion of charges under TADA was filed against the petitioner.

It is respectfully submitted that a Government Committee comprising Additional Chief Secretary (Home), Director-General of Police and certain other officers in a meeting held on October 22, 1993 reviewed the matter and approved the application of charges under TADA against the present petitioner.

4. On the above averments, we issued notices to the Public Prosecutor, Mr. R. K. Shah, Additional Chief Secretary (Home), Ahmedabad, Director-General of Police, Ahmedabad and the Deputy Commissioner of Police (Crime Branch), Ahmedabad.

5. All the parties in response to the notices appeared before us. According to them, the accused who escaped from the police custody was concerned in several murder cases and there were also cases registered against him under the provisions of the TADA and there is plenty of materials that the other accused had escaped only on being abetted by this petitioner and some others and that in respect of this incident, the police constables who escorted escaped accused also arrested under the provisions of TADA.

6. Though we are discharging all the respondents we consider it necessary to record our entire dissatisfaction on inclusion of offences under TADA. We are further constrained to observe that the Screening Committee constituted by the State of such legal officers, as Additional Secretary of Home and Director General of Police, in our opinion, did not examine the material on record as Objectively as it should have. We do not propose to say any further. In view of the circumstances explained to us, we do not like to proceed with this matter any further. Accordingly, all the respondents are discharged. The bail granted to the petitioner shall enure till the disposal of the case.

7. The special leave petition is disposed of accordingly.

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