

Mohd. Yunus

Vs

State of Gujarat

(G. N. Ray, G. B. Pattanaik JJ)

15.10.1997

ORDER

1. In this appeal, the order dated 21st April, 1997 passed by the learned Addl. Designated Judge, Ahmedabad rejecting the application made by the appellant for dropping the charge under Section 3 and 5 of Terrorists and Disruptive Activities (Prevention) Act, 1987 (in short TADA) in Terrorist Criminal Case No.3/96 arising out of I.C.R.No.94/93 of the police station Rakhiyal, District Ahmedabad on account of non compliance of mandatory provisions of Section 20A of TADA, is under challenge.

2. The learned counsel for the appellant has referred to the decision of three Judges' Bench of this court in Anirudhssinji Karansinhji Jadeja and Anr.Vs.State of Gujarat (AIR 1995 (5) SC 2390). It has been held in the said decision that cognizance of the offence under TADA can be taken on compliance of the provisions of sub-section (1) of Section 20A and Section (2) of Section 20A of TADA. Sub-section (1) of Section 20 A of TADA provides: '20-A (A) Notwithstanding anything contained in the code, no information about the commission of an offence under this Act shall be recorded by the police without the prior approval of the District Superintendent of Police.'

3. The learned counsel has contended that in this case, the statutory authority as referred to in sub-section (1) of Section 20A of TADA has not given any prior approval for initiating the criminal proceedings under TADA. Therefore charges under TADA cannot be invoked.

4. It is, however, contended by the prosecution that on the very date when investigation had been made in this case, the Commissioner of Police, Ahmedabad was present and he had given oral permission under Section 20A (1) of TADA. We may indicate here that considering the serious consequence in a criminal case initiated under the provisions of TADA, oral permission cannot be accepted. In our view, Section 20A (1) must be construed by indicating that prior approval of the statutory authority referred to in the said sub section must be in writing so that there is transparency in the action of the statutory authority and there is not occasion for any subterfuge subsequently by introducing oral permission.

5. That apart, in the facts of the case we have no hesitation to hold that even oral permission had not been granted. Dr. Ghatate, the learned counsel for the respondent has drawn our attention to two documents, namely, the latter addressed by the ACP Crime Branch, Ahmedabad to the Deputy Commissioner. Crime Branch, Ahmedabad city, for the invoking Sections 3 and 5 of TADA in respect of Rakhiyal Police Station CR-1-94/93. This letter is dated 11th August, 1994. In the said letter, a request was made that in the facts indicated in the letter, it was necessary to invoke section 3 and 5 of TADA and a request was made to grant approval accordingly. The other document placed

before us by Dr.Ghatate is the permission given by D.C.P on the basis of request made by the A.C.P.Crime Branch Ahmedabad.It appears that on 11.8.94 such permission had been granted by Mr.A.K.Surolia the Deputy Commissioner of Police Crime Branch, Ahmedabad city and such grant of permission is to the following effect:'Therefore, after a careful consideration I deem it fit that in this case relevant provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short TADA) are to be applied in the FIR and hence I grant permission for the same.'

6.Such letter on the face of it indicates that the alleged oral permission had not been granted by the Commissioner of Police otherwise there would not have been any occasion for seeking permission from an authority subordinate to the Commissioner of Police namely, the Deputy Commissioner of Police and consequential grant of permission by such subordinate authority.As the mandatory provisions of Section 20A (1) of TADA has not been complied with, the charge under the provisions of Section 3 and 5 of TADA cannot be sustained in the said criminal case.Therefore, such invocation of the provisions of TADA stands quashed.It is however made clear that it will be open to the concerned authority to proceed in accordance with law as indicated in paragraph 16 of the decision of this Court in Anirudhsinhji's case for invoking provisions of TADA.We make it clear that we have not considered as to whether or not in the facts of the case, a case under Sections 3 and 5 of the TADA has been made out because the condition precedent for invoking such provisions had not been complied with.Such question is therefore kept open to be considered at the appropriate stage.This appeal is accordingly disposed of.