SUPREME COURT OF INDIA

State of Andhra Pradesh through I.G. National Investigation Agency

Vs.

Md.Hussain @ Saleem

Crl.M.P.Nos.17570 & 17571 of 2013

(H.L. Gokhale and J. Chelameswar JJ.)

13.09.2013

JUDGEMENT

H.L. GOKHALE J.

1. These Criminal Misc. Petitions have been filed by the applicant for impleadment, and clarification of the common order passed by this Court on 2.8.2013 in (i) SLP (Crl.) No.7375/2012 State of A.P. through I.G. National Investigating Agency Vs. Md. Hussain @ Saleem, and (ii) SLP (Crl.) No.9788/2012 National Investigation Agency Vs. Ravi Dhiren Ghosh. SLP (Crl.) No.7375/2012 arose from the judgment and order dated 7.9.2012 in CRLP No.6562/2012 passed by the Andhra Pradesh High Court. SLP (Crl.) No.9788/2012 arose out of the order passed by the Bombay High Court on Criminal Bail Application No.1063/2012. The relevant part of this order dated 2.8.2013 passed by this Court reads as follows:- "The only issue raised in these petitions is that in view of the provisions of Section 21 of the National Investigation Agency Act, 2008, the matters in the High Court ought to have been heard by a Division Bench, and not by a Single Judge. The submission made by the learned Additional Solicitor General is based on the provision of sub-section (2) of Section 21, which is a statutory requirement. That being so, the order passed by the High Courts deserve to be set aside, and the proceedings, namely, Crl. P.No.6562/2012 in the High Court of Andhra Pradesh and Criminal Bail Application No.1063/2012 in the Bombay High Court, will have to be restored to the Division Bench of the respective High Courts. Ordered accordingly."

2. The applicant herein is accused No.1 in Special (MCOC) CC No.1/09 pending before the learned NIA and MCOC Court Mumbai. The said case arises out of a

bomb blast in Malegaon that occurred on 29.9.2008. A charge-sheet has been filed on 20.1.2009 against the applicant and others, including 3 absconding accused, under Sections 302/307/326/324/427/153- A/120-B of I.P.C., read with Sections 3,4,5 and 6 of Explosive Substance Act, 1908, Sections 3,5 and 25 of Indian Arms Act, 15,16,17, 18, 20 and 23 of Unlawful Activities (Prevention) Act, 1967, and Sections 3(1) (i), 3(1) (ii), 3(2), 3(4), and 3(5) of Maharashtra Control of Organised Crimes Act, 1999 (MCOC Act for short), before the Court of Special Judge (MCOCA) Greater Mumbai, Maharashtra. The National Investigation Agency has taken over the investigation of this case, by virtue of an order of the Central Government dated 1.4.2011 passed in exercise of the powers conferred upon it by Section 6(5) of The National Investigation Agency Act, 2008 (NIA Act for short).

3. The applicant is in custody and has preferred an application for bail on 23.10.2012, before a Single Judge of the Bombay High Court, bearing Criminal Bail Application No.1679 of 2012, under the provisions of Section 21(4) of the MCOC Act r/w Section 439 of the Code of Criminal Procedure, 1973 (Code for short).

4. It so transpired that during the pendency of this bail application, this Court passed the above referred common order dated 2.8.2013 in SLP (Crl.) No.7375/2012 and SLP (Crl.) No.9788/2012. The learned Special Public Prosecutor appearing in the matter brought this order to the notice of the learned Single Judge hearing the said Criminal Bail Application, and submitted that in view of the said order dated 2.8.2013 passed by this Court, the said Criminal Bail Application is required to be placed before a Division Bench of the High Court. The learned counsel appearing for the applicant submitted to the High Court that the aforesaid order of this Court has no application to the facts of the case of the applicant. The counsel for the applicant however further submitted that he shall seek necessary clarification with respect to the order passed by this Court. The learned Judge has, therefore, adjourned the hearing of the Criminal Bail Application. It is in these circumstances that the present Criminal Misc. Petitions have been filed seeking impleadment and also the following two prayers:-

> (a) allow this application by clarifying/declaring that provisions of Section 21(2) of National Investigation Agency Act, 2008, applies only to those petitions/applications filed under Section 21(1) of the National Investigation Agency Act, 2008, and order of this Hon'ble Court dated 2.8.2013 passed in SLP (Crl.) No.7375 of 2012 & SLP (Crl.) No.9788 of 2012 does not apply to an appeal from an order of the Special Court refusing bail.

(b) Further declare/clarify that where the Maharashtra Control of Organised Crimes Act, 1999 applies, all bail matters shall be governed by Section 21 of the Maharashtra Control Organised Crimes Act, 1999, and not by Section 21 of the National Investigation Agency Act, 2008.

5. The principal submission on behalf of the petitioner is canvassed in ground (B) of this Criminal Misc. Petition which reads as follows:-

> "B. For that Section 21(2) of the NIA Act, 2008, prescribes that every appeal under sub-section (1) of 21 shall be heard by a Bench of 2 Judges of the Hon'ble High Court. Applications for Bail governed by the NIA Act, 2008 are not preferred under 21 (1) of the NIA but under Section 21(4) of the NIA Act, 2008 under which, appeals to the High Court lie only against an order of the special court granting or refusing bail. Appeals under 21(4) are not required to be heard by a Bench of 2 Judges of the High Court. In as much as this Court's order dated 2.8.2013 purports to hold, that appeals from orders of the special court, granting or refusing bail are to be heard by 2 Judges of the Mumbai High Court, the said order is manifestly contrary to the provisions of Section 21 of the NIA Act, 2008."

6. In support of this application it is further contended that the law is very well settled, and an order of refusal of bail is an interlocutory order as decided in more than one judgments of this Hon'ble Court. Reliance is placed on the judgment of this Court in Usmanbhai Dawoodbhai Memon and Ors. v. State of Gujarat (per A.P. Sen, J) reported in AIR 1988 SC 922. It is submitted that this Hon'ble Court in its order dated 2.8.2013 has not noticed that an order granting or rejecting bail is always considered to be an interlocutory one.

7. Mr. Ram Jethmalani, learned senior counsel has appeared in support of these Criminal Misc. Petitions, seeking impleadment and clarification as aforesaid. Mr. Sidhharth Luthra, learned Additional Solicitor General has appeared for the respondent National Investigation Agency.

8. Before we turn to the interpretation of Section 21, we must record that it is not disputed that amongst other provisions the applicant is also being prosecuted for the offences under the provisions of The Unlawful Activities (Prevention) Act, 1967. This Act is included at Sl. No.2 in the Schedule to the NIA Act, 2008. The term "Scheduled Offence" is defined under Section 2(g) of the Act to mean an offence specified in the Schedule. Section 13 of the Act lays down the jurisdiction of Special Courts. Section 13(1) provides that notwithstanding anything contained

in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court, within whose local jurisdiction the said offence was committed. Section 14 gives the powers to the Special Courts with respect to other offences. Section 13(1) and 14 read as follows:-

> "13. Jurisdiction of Special Courts –
>
> (1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.
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> 14. Powers of Special Courts with respect to other offences-
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> (1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.
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> (2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law."
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> Section 19 of the Act provides for a speedy trial of such matters on day to day basis, and also that these trials shall have the precedence over the trial of other cases against the accused.

9. In the present matter we are concerned with the interpretation of Section 21 of the NIA Act, 2008. It will therefore be necessary to reproduce the said section in its entirety. The said section reads as follows:-

> "21. Appeals. –
>
> (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
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> (2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

10. The principal submission of Mr. Ram Jethmalani, learned senior counsel appearing for the applicant has been based on the premise that the order granting or refusing a bail is an interlocutory order, and for that purpose he relied upon the judgment of this Court in Usmanbhai (supra), wherein this Court has observed in paragraph 24 as follows:-

"24. …… It cannot be doubted that the grant or refusal of a bail application is essentially an interlocutory order. There is no finality to such an order for an application for bail can always be renewed from time to time….."

11. Based on this premise Mr. Jethmalani has advanced two-fold submissions:-

(i) Firstly that the order on a bail application is excluded from the coverage of Section 21(1) of the Act, which provides for the appeals to the High Court from any judgment, sentence or order of a special court both on facts and on law. It is only such appeals which are covered under Section 21(1) that are to be heard by a bench of two judges of the High Court as laid down under Section 21(2) of the Act. The appeal against refusal of bail lies to the High Court under

Section 21(4) and not under Section 21(1), and therefore, it need not be heard by a bench of two Judges.

(ii) In any case, it was submitted that the bail application which the applicant had filed before the Bombay High Court was one under Section 21(4) of the MCOC Act read with Section 439 of the Code of Criminal Procedure, and was fully maintainable before a single Judge. He has drawn our attention to the provision of Section 21 of the MCOC Act, 1999 for that purpose.

(iii) For the sake of record, we may refer to Section 21(4) of the MCOC Act which reads as follow:-

"4. Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

12. Now, when we deal with these submissions we must note that when it comes to the Scheduled Offences, the Special Courts are given exclusive jurisdiction to try them under Section 13(1) of the Act. When it is a composite offence covered under any Act specified in the Schedule and some other act, the trial of such offence is also to be conducted before the Special Court in view of Section 14(1) of the Act. Section 16(2) of the Act gives the power to the Special Court to conduct a summary trial, where the offence is punishable with imprisonment for a term not exceeding three years or with fine or both. Section 16(3) of the Act declares as follows:-

"(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offences as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session."

In view of this provision, the application for bail by the accused lies before a Special Court.

13. The above referred Section 21(4) provides that an appeal lies to the High Court against an order of the Special Court granting or refusing bail. However sub-Section (3) which is a prior sub-section, specifically states that 'except as aforesaid', no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court. Therefore, the phrase 'except as aforesaid' takes us to sub-Sections (1) and (2). Thus when anybody is aggrieved by any judgment, sentence or order including an interlocutory order of the Special Court, no such appeal or revision shall lie to any Court except as provided under sub-Section (1) and (2), meaning thereby only to the High Court. This is the mandate of Section 21(3). There is no difficulty in accepting the submission on behalf of the appellant that an order granting or refusing bail is an interlocutory order. The point however to be noted is that as provided under Section 21(4), the appeal against such an order lies to the High Court only, and to no other court as laid down in Section 21(3). Thus it is only the interlocutory orders granting or refusing bail which are made appealable, and no other interlocutory orders, which is made clear in Section 21(1), which lays down that an appeal shall lie to the High Court from any judgment, sentence or order, not being an interlocutory order of a Special Court. Thus other interlocutory orders are not appealable at all. This is because as provided under Section 19 of the Act, the trial is to proceed on day to day basis. It is to be conducted expeditiously. Therefore, no appeal is provided against any of the interlocutory orders passed by the Special Court. The only exception to this provision is that orders either granting or refusing bail are made appealable under Section 21(4). This is because those orders are concerning the liberty of the accused, and therefore although other interlocutory orders are not appealable, an appeal is provided against the order granting or refusing the bail. Section 21(4), thus carves out an exception to the exclusion of interlocutory orders, which are not appealable under Section 21(1). The order granting or refusing the bail is therefore very much an order against which an appeal is permitted under Section 21(1) of the Act.

14. Section 21(2) provides that every such appeal under sub- Section (1) shall be heard by a bench of two Judges of the High Court. This is because of the importance that is given by the Parliament to the prosecution concerning the Scheduled Offences. They are serious offences affecting the sovereignty and security of the State amongst other offences, for the investigation of which this Special Act has been passed. If the Parliament in its wisdom has desired that such appeals shall be heard only by a bench of two Judges of the High Court, this Court

cannot detract from the intention of the Parliament. Therefore, the interpretation placed by Mr. Ram Jethmalani on Section 21(1) that all interlocutory orders are excluded from Section 21(1) cannot be accepted. If such an interpretation is accepted it will mean that there will be no appeal against an order granting or refusing bail. On the other hand, sub-Section (4) has made that specific provision, though sub-Section (1) otherwise excludes appeals from interlocutory orders. These appeals under sub-Section (1) are to be heard by a bench of two Judges as provided under sub-Section (2). This being the position, there is no merit in the submission canvassed on behalf of the appellant that appeals against the orders granting or refusing bail need not be heard by a bench of two Judges.

15. We cannot ignore that it is a well settled canon of interpretation that when it comes to construction of a section, it is to be read in its entirety, and its sub-sections are to be read in relation to each other, and not disjunctively. Besides, the text of a section has to be read in the context of the statute. A few sub-sections of a section cannot be separated from other sub-sections, and read to convey something altogether different from the theme underlying the entire section. That is how a section is required to be read purposively and meaningfully.

16. (i) As noted earlier, the submission of the applicant is two-fold. Firstly, as stated above the appeal against an order granting or refusing bail under Section 21(4) of the Act need not be before a bench of two Judges, which is untenable as noted above.

> (ii) The other submission is that the application for bail which is made by the applicant before the High Court is an original application under Section 21(4) of the MCOC Act read with Section 439 of the Code, and is therefore, maintainable before a Single Judge of the High Court. As far as this submission is concerned, it has been repelled in the judgment of Usmanbhai (supra) relied upon by the counsel of the applicant himself. That was a matter under Terrorist and Disruptive Activities (Prevention) Act (28 of 1987) shortly known as TADA. This Act also had a similar provision in Section 19(1) thereof which read as follows:-
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> "19 (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order including an interlocutory order of a Designated Court."

It is also material to note that Section 20(8) of TADA had provisions identical to Section 21(4) of MCOC Act. The Gujarat High Court while interpreting the provisions of TADA had held that it did not have the jurisdiction to entertain the application for bail either under Section 439 or under Section 482 of the Code. That view was confirmed by this Court by specifically stating at the end of para 22 of its judgment in Usmanbhai's case (supra) in following words:-

"We must accordingly uphold the view expressed by the High Court that it had no jurisdiction to entertain an application for bail under S. 439 or under S. 482 of the Code."

17. The view taken by this Court in Usmanbhai was reiterated in State of Punjab v. Kewal Singh and Anr. reported in 1990 (Supp) SCC 147. That was also a matter under TADA, and the application for bail by the respondents was rejected by the designated court. Thereupon they had moved the High Court under Section 439 of Cr.P.C. for grant of bail, and a learned single Judge of Punjab & Haryana High Court had enlarged them on bail on the ground that the co-accused had been granted bail. The order in this matter is also passed by a bench presided over by A.P. Sen, J. This Court set aside the order passed by the High Court and clearly observed in paragraph 2 as follows:-

"2. …We are of the view that the High Court had no jurisdiction to entertain an application for bail under Section 439 of the Code. See Usmanbhai Dawoodbhai Memon V. State of Gujarat…."

Thereafter, the Court observed in paragraph 3:-

"3. We however wish to make it clear that the respondents may move the Designated Court for grant of bail afresh. The Designated Court shall deal with such application for bail, if filed, in the light of the principles laid down by this Court in Usmanbhai Dawoodbhai case."

18. It is material to note that the view taken in Usmanbhai (supra) was further confirmed by this Court in State of Gujarat v. Salimbhai reported in 2003 (8) SCC 50, to which our attention was drawn by Mr. Luthra, the learned Additional

Solicitor General appearing for the NIA. This time the Court was concerned with similar provisions of Prevention of Terrorism Act, 2002 (POTA for short). Section 34 of POTA is entirely identical to Section 21 of the NIA Act except that it did not contain the second proviso to sub-Section 5 of Section 21 of NIA Act (which has been quoted above), and which proviso has no relevance in the present case. It was specifically contended in that matter by the learned counsel for the respondent that the power of the High Court to grant bail under Section 439 of Cr.P.C. had not been taken away by POTA. In para 39 of the judgment this Court confirmed the view taken in Usmanbhai in the following words:-

> "13. Section 20 of TADA contained an identical provision which expressly excluded the applicability of Section 438 of the Code but said nothing about Section 439 and a similar argument that the power of the High Court to grant bail under the aforesaid provision consequently remained intact was repelled in Usmanbhai Dawoodbhai Menon v. State of Gujarat. Having regard to the scheme of TADA, it was held that there was complete exclusion of the jurisdiction of the High Court to entertain a bail application under Section 439 of the Code. This view was reiterated in State of Punjab v. Kewal Singh (1990 Supp SCC 147)".

19. In this judgment in State of Gujarat v. Salimbhai (supra), the Court specifically rejected the plea based on Section 439 of the Code by holding that the High Court under the special statute could not be said to have both appellate and original jurisdiction in respect of the same matter. The Court observed in para 14 thereof as follows:

> "14. That apart, if the argument of the learned counsel for the respondents is accepted, it would mean that a person whose bail under POTA has been rejected by the Special Court will have two remedies and he can avail any one of them at his sweet will. He may move a bail application before the High Court under Section 439 Cr.P.C. in the original or concurrent jurisdiction which may be heard by a Single Judge or may prefer an appeal under sub-section (4) of Section 34 of POTA which would be heard by a Bench of two Judges. To interpret a statutory provision in such a manner that a court can exercise both appellate and original jurisdiction in respect of the same matter will lead to an incongruous situation. The contention is therefore fallacious."

Thus, the law on the issue in hand is very well settled, and there are three previous judgments of this Court already holding the field, and yet the same challenge is being raised once again, though now in respect to the NIA Act.

20. The order passed by this Court on 2.8.2013 in SLP (Crl.) No.7375/2012 and SLP (Crl.) No.9788/2012 is therefore clarified as follows:-

(a) Firstly, an appeal from an order of the Special Court under NIA Act, refusing or granting bail shall lie only to a bench of two Judges of the High Court.

(b) And, secondly as far as prayer (b) of the petition for clarification is concerned, it is made clear that inasmuch as the applicant is being prosecuted for the offences under the MCOC Act, 1999, as well as The Unlawful Activities (Prevention) Act, 1967, such offences are triable only by Special Court, and therefore application for bail in such matters will have to be made before the Special Court under the NIA Act, 2008, and shall not lie before the High Court either under Section 439 or under Section 482 of the Code. The application for bail filed by the applicant in the present case is not maintainable before the High Court.

(c) Thus, where the NIA Act applies, the original application for bail shall lie only before the Special Court, and appeal against the orders therein shall lie only to a bench of two Judges of the High Court.

22. The Criminal Misc. Petitions are therefore dismissed. Registry to send a copy of this order to the Andhra Pradesh and Bombay High Courts forthwith.