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S.N. THAPA

v.

STATE OF MAHARASHTRA

APRIL 5, 1994

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[A.M. AHMADI AND R.M. SAHAI, JJ.]

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*Terrorist and Disruptive Activities Act, 1987—Secs. 3, 4, 5 and 20(8)—Bail Application—Bombay Bomb Blast Case—Smuggling of arms, ammunition and explosive and transporting to Bombay—Appellant, an Additional Collector of Customs prosecuted—No legal evidence to implicate appellant—Order of release on interim bail.*

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This appeal is filed against the order passed by the Designated Court dismissing the bail application filed u/s 20(8) TADA. The appellant, Additional Collector of Customs is an accused in the Bombay Bomb Blast Case. The basic allegation against the appellant in the chargesheet is that by colluding with the conspirators he permitted the arms and explosives to be smuggled into the country. The Designated Court recorded a finding that there was no direct evidence to implicate the appellant in the conspiracy, yet it rejected the bail application as according to it there was material to draw an inference that the appellant rendered assistance to the smugglers.

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The appellant urged that the inference drawn by the Designated Court that the appellant rendered assistance to the smugglers was based on no material on record. The appeal was opposed by the State and it was urged that the chargesheet has been submitted and in case such accused were released on bail it would create a very demoralising effect on the prosecution.

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Disposing of the matter, this Court

HELD : 1.1. The tragedy that took place in March 1993, was one of the ghastliest in the history of this country. Further a crime of such magnitude was possible due to illegal smuggling of huge quantity of arms and explosives. That such smuggling was possible due to connivance of the officers of the Customs Department is *prima facie* established. Yet it cannot be the sole ground to keep every officer of the Customs Department

behind the bars unless there was some material to justify it.

[356-G-H; 357-A]

1.2. No material could be pointed out which could establish that the appellant was responsible in the importation and transportation of the contraband to Bombay. The basic allegation against the appellant is that he by colluding with the conspirators permitted the goods to be smuggled in large scale cannot be disputed. But the question is whether there is any material which could establish even strong suspicion against the appellant that he was aware of the nature of conspiracy. [357-F]

1.3. In the facts and circumstances of the case and on the material, as at present, it appears there was no legal evidence to *prima facie* establish that the appellant had assisted either in the smuggling of the goods or of its transportation to Bombay. [358-D-E]

1.4. However, since the chargesheet has been submitted, the Designated Court should reconsider the matter with a view to finding out if there is any evidence collected in the course of investigation which would show the involvement of the appellant with the crime in question. [358-E-F]

1.5. The appellant is directed to be released on interim bail, subject to furnishing of a personal bond. [358-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 245 of 1994.

From the Judgment and Order dated 18.9.93 of the Designated Court at Pune in CrI. Misc. A. No. 55 of 1990.

Ram Jathmalani, S.B. Jaisinghani, S.P. Goyal and Ms. Lata Krishnamurthy for the Appellant.

Altaf Ahmed, S.M. Jadhav and A.S. Bhasme for the Respondent.

The Judgement of the Court was delivered by

**R.M. SAHAI, J.** This appeal is directed against the order dated 18th September 1993 passed by the Designated Court, Pune dismissing the bail application filed by the appellant under Section 20(8) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as 'TADA').

A 2. The appellant is an Additional Collector of Customs. He is an  
accused against whom a case was registered under various sections of  
Indian Penal Code including Sections 3, 4 and 5 of TADA. The case relates  
to what has come to be known as Bombay Bomb Blast case. It is undisputed  
that between the last week of January and first fortnight of February 1993  
B huge quantity of arms ammunition and explosives were smuggled in the  
country. According to prosecution the large scale smuggling of highly  
sophisticated and lethal weapons would not have been possible but for the  
connivance of the officials of the Customs Department. The Designated  
Court after considering the material on record and after a detailed discus-  
sion recorded a finding that there was no direct evidence to implicate the  
C appellant in the conspiracy. Yet it rejected the bail application as according  
to it there was material to draw an inference that the appellant rendered  
assistance to the smugglers in importing the huge quantity of explosives,  
arms and ammunition and in transporting it to Bombay where the bomb  
explosions took place causing deaths of hundreds of persons and struck  
D terror in the people.

3. The learned counsel for appellant assailed the finding recorded by  
the Designated Court and placed reliance on various material to  
demonstrate that no offence under any of the sections of the TADA was  
made out against the appellant. The learned counsel urged that the various  
E circumstances which have been relied by the Designated Court were either  
irrelevant or were of no consequence and they taken either individually or  
collectively could not establish any of the offences under Sections 3, 4 and  
5. The learned counsel urged that the inference drawn by the Designated  
Court that the appellant rendered assistance to the smugglers in landing  
F huge quantity of explosives was based on no material on record. The appeal  
was opposed by the State and it was urged that the chargesheet has been  
submitted and the trial was going to commence in April 1994. The learned  
counsel submitted that in case such accused were released on bail it would  
create a very demoralising effect on the prosecution and shake the social  
confidence. On merits the learned counsel argued that the Designated  
G Court did not commit any error in dismissing the application.

4. The tragedy that took place in March 1993 was one of the  
ghastliest in the history of this country. Further a crime of such magnitude  
was possible due to illegal smuggling of huge quantity of arms and ex-  
H plosives. That such smuggling was possible due to connivance of the

officers of the Customs Department is *prima facie* established. Yet it cannot be the sole ground to keep every officer of the Customs Department behind the bars unless there was some material to justify it. From the confessional statements of the officers of Customs Department it appears that for these smuggling activities huge amount of money was paid which used to be shared proportionately by the officers in the department. Yet the question is if there is any evidence or any material on record to establish that the appellant was associated or was responsible for smuggling of the arms. The case of the prosecution was that the appellant helped the smugglers in landing of the arms, ammution and explosives on the sea coast and in transporting the same to Bombay where later a series of bomb blasts took place. Even in the chargesheet which has now been submitted and a copy of which has been filed it is stated that the investigation disclosed that the appellant colluded with other conspirators in illegal act of intentionally facilitating the landing and transportation of the contrabands comprising AK- 56 rifles, ammunitions, 9mm pistol and detonators hand granades, explosives etc. It is also alleged that the appellant despite information from his superior officers did not maintain a strict vigil and knowingly and intentionally misdirected customs surveillance staff in different directions with a view to facilitating safe landing of the contraband. In this manner by defaulting in the normal performance of his duties it is alleged that he knowingly and intentionally facilitated others in achieving the objective of criminal conspiracy.

5. No material could be pointed out by the learned counsel for the State which could establish that the appellant was responsible in the importation and transportation of the contraband to Bombay. The basic allegation against the appellant is that he by colluding with the conspirators permitted the arms and explosives to be smuggled in the country. That the goods were smuggled in large scale cannot be disputed. But the question is whether there is any material which could establish even strong suspicion against the appellant that he was aware of the nature of conspiracy.

6. The first circumstance relied by the Designated Court to draw the inference against the appellant was a confessional statement made by an Inspector of Customs Shri P. Natarajan that he had learnt that the appellant was aware of every landing and that at every time of landing the appellant used to get substantial amount. He further stated that he learnt that a meeting had taken place between the smugglers and the appellant

A in a hotel. The other circumstance relied was the statement made by one of the Assistant Collectors of Customs that in the month of January the appellant had circulated an order to the effect that unless and until an alert was sounded patrolling and checking of the vehicles should not be undertaken. Another circumstance relied on against the appellant was that when

B on one occasion he was informed that smuggled goods may land he stationed the checking party in such a manner that he kept one route deliberately open for the smugglers to escape. Each of the circumstances, according to learned counsel for appellant, was irrelevant and in any case did not establish any connection between the appellant and the crime in question. The learned counsel urged that the confessional statement of the

C Customs Inspector could not be read in evidence as it was only based on hearsay. Besides he was a person against whom the appellant had taken steps and got him suspended and transferred. The learned counsel submitted that if the confessional statement is ignored then the other circumstances which have been relied on are not only too remote to create

D any suspicion, what to say of strong suspicion, but were irrelevant and liable to be ignored. We do not propose to make any comment on the evidence on which reliance has been placed by the Designated Court. But in the facts and circumstances of the case and on the material, as at present, it appears there was no legal evidence to *prima facie* establish that the

E appellant had assisted either in the smuggling of the goods or of its transportation to Bombay.

7. However, since the charge-sheet has been submitted, we would like the Designated Court to reconsider the matter with a view to finding out if there is any evidence collected in the course of investigation which

F would show the involvement of the appellant with the crime in question.

8. In the result, this appeal is allowed, the order of the Designated Court is set aside and the appellant is directed to be released on interim bail, subejct to furnishing of a personal bond of Rs. 1,00,000 before the

G Designated Court and two sureties of Rs. 50,000 each to the satisfaction of the Designated Court. The matter is remitted to the Designated Court for reconsideration of the bail application in the light of fresh material that might have been collected against the appellant during investigation.

H Till the grant of final bail the appellant shall not leave Bombay. The

passport etc., if any, shall stand impounded and the appellant shall not be permitted to leave the country. It shall be open to the Designated Court if it comes to conclusion that the appellant is entitled to be released on bail to impose such conditions as it considers necessary. If the Designated Court refuses bail and rejects the application the appellant will surrender to his bail.

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Appeal disposed of.

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