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**(2002) 09 AP CK 0026**

**Andhra Pradesh High Court**

**Case No:** Criminal Petition No. 4049 of 2002

Bandi Narendra Kumar

APPELLANT

Vs

State of A.P.

RESPONDENT

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**Date of Decision:** Sept. 4, 2002

**Acts Referred:**

- Prevention of Terrorism Act, 2002 - Section 21(1), 49

**Citation:** (2002) 2 ALD(Cri) 476 : (2002) 5 ALT 129 : (2002) 2 ALT(Cri) 325 : (2002) 3 APLJ 1 : (2003) CriLJ 288 : (2003) 1 RCR(Criminal) 505

**Hon'ble Judges:** C.Y. Somayajulu, J

**Bench:** Single Bench

**Advocate:** R.N. Hemendranath Reddy, for the Appellant; Public Prosecutor, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.

This is an application for bail by A-5 in Crime No. 131/2002 of Yellandu police station registered u/s 21(1)(a)(b) of Prevention of Terrorism Act, 2002 (for short the "Act").

2. The case of the prosecution, as against the petitioner, is that he provided medical assistance to Kontham Mallaiah alias Sudheer, a committee member of East Sub-Zonal command of P.W.G., L.G.S. Group and thus committed an offence u/s 21(1)(a)(b) of the Act.

3. The contention of the learned counsel for the petitioner is that even assuming that the alleged act of the petitioner providing medical assistance is true it cannot be termed as an offence, much less an offence under the Act, by relying on the observations of Supreme Court in [Pt. Parmanand Katara Vs. Union of India \(UOI\) and Others](#), para 8, reading :

"Every doctor whether at a Government Hospital or otherwise has the professional obligation to extend his services with due expertise to protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way."

4. He also relied on the observations in para 15 of [Pattipati Venkaiah Vs. State of Andhra Pradesh](#), reading : "A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases." He also contended that the petitioner has months old child to be looked after and so he may be granted bail on humanitarian grounds, at least.

5. The contention of the learned Additional Public Prosecutor is that since the investigation is in progress and since as per Section 49(7) of the Act if bail is opposed a person accused of an offence under the Act is not entitled to bail and since bail petition of the petitioner is being opposed by him petitioner is not entitled to bail. He further contended that as per Section 21 of the Act supporting a terrorist organization is itself a crime and "support" as per the said section is not restricted to, the providing of money or other property within the meaning of Section 22 of the Act and so providing medical assistance to a terrorist is also an act of supporting terrorism within the meaning of Section 21 of the Act and so petitioner is not entitled to bail at this stage.

6. As per the remand case dairy the confession made by A-1 before the Superintendent of Police, Khammam, shows that he took the petitioner to Kontham Mallaiah alias Sudheer and got him treated. It is necessary to mention here that the Superintendent of Police, Khammam, recorded the confession of the petitioner. The said statement of the petitioner shows that a photographer by name Mohd. Sultan (A-1) is his friend and that about 40 days prior to his confession the said Mohd. Sultan (A-1) had telephoned and informed him that a close relative of him is unwell and has to be treated by him, and so he went to A-1, when A-1 informed him that Sudheer, head of two Dalams of People War group is unwell and has to be treated, and that he agreed to treat him and thereupon he, A-1 and one Sambaiah, (a member of the PWG) went into the forest and examined Sudheer and drew samples of his blood, urine and semen and sent those samples for analysis.

"Whether providing medical assistance to a terrorist would be an offence within the meaning of Section 21 of the Act is the relevant consideration for disposal of this petition. Medical assistance can be to keep fit a terrorist to enable him to continue terrorist activity, or to treat an ailing terrorist to regain his health. If a medical practitioner makes periodic visits to terrorist camps and examines and instruct them

as to how they should keep themselves fit to carry out their terrorist activity, it may amount to an offence u/s 21 of the Act. That question does not arise in this petition, because it is not even the case of the prosecution that petitioner did such an act. The confessional statement of A-1, and the statement of the petitioner was recorded by the Superintendent of Police, which are admissible in evidence as per the provisions of the Act, show that the petitioner was taken into forest to treat an ailing member of a banned organization. A doctor providing medical assistance going to a person who is ailing, to help him regain his health and make him normal, whether he is a criminal or a gentleman, is not and cannot be said to be an offence under the provisions of any Act much less the Act because the observation of the Supreme Court in [Pt. Parmanand Katara Vs. Union of India \(UOI\) and Others](#), extracted above. Therefore, prima facie, the act of the petitioner going into the forest, and treating a leader of a banned organization cannot be said to be an act falling u/s 21 of the Act, because he as a doctor has a duty to provide treatment to an ailing person irrespective of the fact whether he knows that, that person is a criminal or terrorist etc. or a gentleman. Therefore the petitioner is entitled to bail, in spite of opposition of the petition by the Additional Public Prosecutor.

7. Petitioner shall be released on bail on his executing a bond for Rs. 10,000/- (Rupees ten thousand only) with two sureties in a like sum each to the satisfaction of the Additional District and Sessions Judge, Khammam. Petitioner should report his presence at Yellandu police station on every Wednesday and Sunday between 10 and 11 a.m. till further orders of this Court.