National Investigation Agency, NIA, Hyderabad Vs Devendra Gupta and Another

Court: Andhra Pradesh High Court

Date of Decision: April 18, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 164, 167, 173, 2, 268
Explosive Substances Act, 1908 â€" Section 3, 4, 5, 6
National Investigation Agency Act, 2008 â€" Section 21
Penal Code, 1860 (IPC) â€" Section 120(B), 120b(B), 207, 302, 307
Unlawful Activities (Prevention) Act, 1967 â€" Section 13, 15, 16, 17, 18

Citation: (2014) 1 ALD(Cri) 109 : (2013) 1 ALD(Cri) 907

Hon'ble Judges: M.S. Ramachandra Rao, J; K.C. Bhanu, J

Bench: Division Bench

Advocate: P. Vishnuvardhan Reddy, Spl. Public Prosecutor for NIA, for the Appellant; N. Ramachander Rao, for the Respondents 1 and 2, Sri M. Vijaya Kanth and Sri Venugopal Julakanti, for the Respondent

Final Decision: Allowed

Judgement

M.S. Ramachandra Rao, J.
This is an appeal filed u/S. 21 of the National Investigation Agency Act, 2008 by the National Investigation

Agency (for short, "NIA"), Hyderabad, challenging the order dt. 26.11.2012 of the IV Addl. Metropolitan Sessions Judge, Hyderabad (for short

the Sessions Court"") in Crl. M.P. No. 569 of 2012, vide Spl. Sc. No. 1 of 2011 of CBI Police Station in NIA Cr. No. 2 of 2011. The

respondents herein are A.1 and A.2 in Spl. Sc. No. 1 of 2011 in NIA Cr. No. 2/2011 wherein they are alleged to have committed offences u/S.

302, 307, 326, 120(B) IPC; Sections 3, 4, 5 of Explosive Substances Act, 1908; and Sections 13, 15, 16, 18, 19 and 23 of Un-lawful Activities

(Prevention) Act, 1967.

2. The above Crl. M.P. No. 569 of 2012 was filed by the respondents seeking regular bail u/S. 439 of Cr.P.C., contending that they are in judicial

custody since 17.06.2010, i.e., for more than two years and 5 months prior to the filing of the petition; that on 18.05.2007 at about 01:25 p.m.,

there was a bomb-blast in Mecca Masjid, Hyderabad, in which nine persons died and fifty-eight persons suffered injuries; the same day, the SHO,

P.S. Hussaini-Alam, Hyderabad, (A.P.), registered a case vide Cr. No. 100/2007 u/S. 302, 207, 120(B) IPC, Sec. 3 and 5 of Explosive

Substance Act, 1908; subsequently the case was transferred to CBI; the CBI re-registered the case vide R.C. No. 5(S)/2007/SCR-III/CBI/ND

on 6.10.2007 under the same sections of law and took up investigation; they are innocent and have nothing to do with the offences alleged and

have been falsely implicated in the above case; that there is a connected case R.C. No. 6(S)/2007/SCR-III/CBI/ND with regard to material seized

in the premises of Mecca Masjid which was subsequently defused and was registered suo moto in Cr. No. 107/2007; both the RCs were clubbed

and a common investigation was done by the CBI; a charge-sheet dt. 13.12.2010 was filed by the CBI arraying them as Accused Nos. 1 and 2;

they were earlier arrested in Ajmer blast case and the CBI filed PT warrants against them connecting them with the offence; took them into police

custody twice and during the course of investigation while they were in judicial custody over 205 witnesses were examined and the said charge-

sheet was filed; the CBI has filed false case against them and the entire investigation is unscientific, motivated and also filed for the purpose of

defaming a particular organization; some other persons were arrested by the A.P. State Police and they had confessed that they were responsible

for the blasts in the Mecca Masjid after they were subjected to Narco Analysis Test; the only allegation against them is that some common SIM

cards found in the area were purchased by them in the year 2003 or so and subsequently in the year 2010, i.e., after seven years, a test

identification parade to identify the purchasers of the SIM cards and mobile phones was made, that too after their photographs appeared in

newspapers and magazines; all the witnesses examined during the investigation spoke about unconnected matters; the investigation by the CBI is

malafide; the entire episode of Swami Asseemanand, shown as A.6, his confession statement before the Magistrate, his change of heart by another

accused in the related case and consequent implication of innocent people in his confession proves the malafides of the prosecution in the entire

investigation; as the CBI had completed the investigation as far as they are concerned and as they are innocent and no way connected or

concerned with the blast at Mecca Masjid or in any other place they should be released on bail; they came from respectable families and are

permanent residents of Ajmer and Indore and were ready to furnish sureties and abide by any terms and conditions which may be imposed in the

event of grant of bail.

3. The appellant/NIA filed objection petition to the above bail application contending that both the respondents were arrayed after investigation by

the CBI; A.3- Sandeep V Dange and A.4-Ram Chandra Kalsangra were absconding; A.5-Sunil Joshi expired (murdered at Dewas, M.P.); after

the CBI filed charge-sheet on 13.12.2010, considering the gravity of the offence, the fact that the offences fall under Schedule to the National

Investigation Act, 2008 and since it involves the security of the State, the case was transferred to the NIA by the Ministry of Home Affairs,

Government of India, IS-1 Division by the Order No. 1-11034/18/2011-IS-IV dt. 04.04.2011; the NIA re-registered the case as Cr. No.

2/2011 u/s. 302, 307, 326, 511 r/w 120(B) IPC, Sections 3, 4, 5 and 6 of Explosive Substance Act, 1908 and Sections 13, 15 r/w. 16, 18, 19

and 23 of Unlawful Activities (Prevention) Act, 1967; the NIA also took up investigation and all relevant documents were collected; during the

course of investigation by the CBI, the statement of the accused A.6-Swami Asemanand was recorded u/S. 164 Cr.P.C. by the Hon''ble Court of

Sh. Deepak Dabas, Munsif Magistrate Central-04, Delhi on 18.12.2010, wherein he had confessed the offence and revealed a larger conspiracy

behind the series of blasts targeting the Muslim populated areas and involvement and logistic support of the accused. It also contended that:

(a) an un-exploded improvised explosive device (IED) was found immediately after the bomb blast inside the Mecca Masjid; upon analysis of this

IED by the APFSL, it was found to have been made of high explosive substances such as RDX and TNT and that only due to slight damage in the

electric circuit it had not exploded; if not, more casualties would have occurred; a SIM and a Nokia Hand set model 6030 with IMEI

353938012488999 was found in this IED and it was revealed in the investigation that this mobile handset was purchased by the 2nd respondent;

the same is corroborated by the statement of LW. 73-Sachin Bansal and LW. 74 Ishanth Chawla; LW. 74 had identified A.2-Lokesh Sharma in

Test Identification Parade as the person who had purchased the said handset;

(b) further the SIM card of the mobile phone number 9732110289 which was purchased in the fake name of one Babulal Yadav was found in the

Nokia 6030 model handset having the above IMEI number and the same was purchased by A.2 which was found along with the un-exploded

IDE; this shows the involvement of A.2 for the purpose of conducting explosions;

(c) LW. 118-Vinay Pandey spoke about the close association of the 2nd respondent and others like Sunil Joshi (A-5) and 1st respondent and

about keeping a gunny bag containing suspicious material in his house by A.5; he also spoke about the training of Dasarath @ Rajender Pahalwan

@ Samundar and Dhan Singh at Jammu Kashmir who were taken there by Sunil Joshi;

(d) another witness LW. 141-Shivam Dhakad stated about the participation of the 2nd respondent in the meeting held at Gujrati Dharmashala,

Jaipur in 2005 with one Indresh along with Samundar @ Rajender Pahalvan, Sunil Joshi, Pragya Singh, Ramji and others; later A.5-Sunil Joshi

delegated certain tasks to the 2nd respondent, Ramji and Lokesh Sharma to procure arms/explosives and this proves their involvement in the

conspiracy;

(e) the complicity of the 2nd respondent is also corroborated by the confession statement of A.6-Swamy Aseemanand, wherein he stated that the

2nd respondent participated in conspiracy meetings held under his leadership at the house of A.7-Bharath Bhai and these circumstances prove the

involvement of the 2nd respondent in the case; (f) LW. 123-Vikas Kumar Pandey spoke about the efforts of the 2nd respondent to procure EPIC

(Election Picture Identity Cards) with the intention to use them to purchase SIM cards and had identified the 1st respondent in the Test

Identification Parade;

(f) LW. 129-Rohith Kumar Jha, in his statement which was recorded u/S. 164 Cr.P.C. stated about the association of the 1st respondent with the

other accused A.5-Sunil Joshi, Ramchandra Kalsangra@Ramji for procurement of voter ID cards and SIMs and he also revealed that the 1st

respondent requested him to arrange voter ID cards or driving licence and when the former asked the purpose for which they were required the

latter responded that they were required for secret works; in the month of July/August, 2008, he saw the driving licence and voter identity card in

the name of Babulal Yadav, apart from 10 to 15 denonators and some rounds in the room of 1st respondent-Devender Gupta and when LW.

129-Rohith Kumar Jha enquired with 1st respondent-Devender Gupta why he would wrap them all in carbon papers, the latter replied that the

machines cannot detect detonators wrapped in carbon papers;

(g) the involvement of the 1st respondent in the offence and his association with other accused were revealed through the 164 Cr.P.C. statement of

LW. 130-Ranjan Kumar Sinha;

(h) all the above material would show that all the accused participated in the commission of bomb explosion in many of the Muslim populated

areas, especially in Mecca Masjid; and the acts of the accused resulted in the death of nine persons and injuries to fifty-eight persons by the use of

high explosives which is a terrorist act within the meaning of Section 15 of Un-lawful Activities (Prevention) Act, 1967 as amended in 2008;

(i) as per Section 43(D) of the said Act, no person accused of an offence under the said act is entitled to be released on bail, if the accusation

against him is prima facie true;

(j) A.3 and A.4 are still at large and despite strenuous efforts by several law investigating agencies they could not be arrested; and

(k) if the respondents are granted bail there is every chance that they will also abscond from the process of law and alert the absconders; since the

offence involved in the case is based on conspiracy, the chance of getting witnesses outside the acquaintances and former friends of these accused

is rare; most of the witnesses to the conspiracy are former co-travellers of the accused; release of the accused on bail will therefore result in

influencing the witnesses who are more acquainted with them; and therefore, they prayed that the bail application filed by respondent Nos. 1 and 2

be dismissed.

4. On 16.05.2011, the NIA filed a charge-sheet before the Hon''ble IV Addl. Metropolitan Sessions Judge-cum-Special Court for N.I.A. Cases,

Hyderabad, Andhra Pradesh, against the respondents herein u/S. 302, 307, 326 and 324 r/w. 120b(B) IPC; Sections 13, 15 r/w. 16, 17, 18, 19

and 23 of Unlawful Activities (Prevention) Act, 1967 (as amended in 2004) and Sections 3, 4 and 5 of Explosive Substances Act, 1908.

5. By the impugned order dt. 26.11.2012, the IV Addl. Metropolitan Sessions Judge, Hyderabad allowed the Crl. M.P. No. 569 of 2012 and

found that there were reasonable grounds for believing that the accusations against the respondents are prima facie true. Yet he granted bail to the

respondent Nos. 1 and 2 on condition that they execute a personal bond of Rs. 50,000/- with two sureties each for a like sum and on their

surrendering their passports. He further directed that they should undertake to co-operate with investigation agency and not to meddle with any

listed witnesses or who would have something to contribute in the case, apart from attending the court at all relevant times for the purpose of the

case.

6. Aggrieved thereby, the present appeal has been filed u/S. 21 of the National Investigation Agency Act, 2008 by the NIA, Hyderabad.

7. On 03.12.12, this Court admitted the appeal and in Crl. A.M.P. No. 2535/2012 granted interim suspension of the order dt. 26.11.2012 in Crl.

M.P. No. 569 of 2012 of the IV Addl. Metropolitan Sessions Judge, Hyderabad. In view of this, the accused were not released and they continue

to be in judicial custody.

8. Heard, Sri P. Vishnuvardhan Reddy-Spl. Public Prosecutor for NIA; Sri N. Ramachander Rao-Senior Advocate, representing Sri M. Vijaya

Kanth and Sri Venugopal Julakanti-counsel for the respondent Nos. 1 and 2.

9. The Spl. Public Prosecutor for the NIA contended that the order of the Sessions Court granting bail to the respondent Nos. 1 and 2 is contrary

to law, perverse and unsustainable; the learned Sessions Judge having found that there were reasonable grounds for believing that the accusations

against the respondents are prima facie true could not have granted bail to the respondents in view of the express provision contained in the

proviso to sub-section 5 of Section 43(D); the proviso to sub-Section 5 of Section 43(D) bars the release of such accused person on bail or on his

own bond if the Court, if on a perusal of the case diary or the report made u/s 173 of the Code, it is of the opinion that there are reasonable

grounds for believing that the accusation against the person is prima facie true; this provision of law has been ignored by the Sessions Judge while

granting bail to the respondents; the view of the Sessions Judge that while a foreign citizen who is an accused can be released under exceptional

circumstances, it would work out hardship if citizens of India are denied bail forever is perverse; the view of the Sessions Judge that respondent

Nos. 1 and 2 have been in judicial custody for more than 2 years 5 months and there is no possibility of early commencement of trial and so it is

not just and fair to deny them bail, is also perverse; these accused were also involved in other cases of a similar nature: the 1st respondent is also

involved in the Ajmer Durgah blast case of 2007 (R.C. No. 04 of 2011) wherein two persons died and seventeen persons were injured; the 2nd

respondent is also involved in Malegoan-I case of 2006 (R.C. No. 03 of 2011) wherein forty persons died and sixty-five persons suffered injuries,

Samjhouta Train blast of 2007 (R.C. No. 09 of 2010) wherein sixty-eight persons died and twelve persons injured, Ajmer Dargah blast of 2007

(R.C. No. 04 of 2011) wherein two persons died and seventeen injured, apart from the murder case of A.5-Sunil Josh (R.C. No. 08 of 2011).

The 1st respondent is now at Jaipur jail while the 2nd respondent is at Ambala Jail; A.3 and A.4 are absconding; A.5 died; A.6 is in judicial

custody at Ambala; A.7 was granted bail on a technical ground as the charge-sheet was not filed within the stipulated period after remand; and

therefore the orders of the Sessions Judge granting bail are liable to be set aside. The learned Spl. Public Prosecutor also took us through the

statements made by LWs. 73, 74 and 130 recorded by the CBI to show that prima-facie the respondent Nos. 1 and 2 are involved in the

commission of the offence. He also contended that the principles governing the grant of bail as laid down by the Supreme Court of India and other

Courts have not been followed by the Sessions Judge while passing the impugned order. He relied on the decisions in State of Maharashtra and

others v. Dhanendra Shriram Bhurle and others; Moulvi Hussain Ibrahim Umarji v. State of Gujarat; People''s Union for Civil Liberties and another

v. Union of India; Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and another; Ram Govind Upadhyay v. Sudarshan Singh and others;

Lokesh Singh v. State of Uttar Pradesh and others; Narendra K. (Admn.) Dr. v. State of Gujarat and another; Puran v. Rambilas; Shaheen

Welfare Association v. Union of India and others; Panchanan Mishra v. Digambar Mishra and others; Ash Mohammad v. Shiv Raj Singh @ lalla

babu and another; Jibangshu Paul v. NIA; and State of Maharashtra v. Anand Chintaman Dighe.

10. The counsel for the respondent Nos. 1 and 2 however contended that the order of the Sessions Judge granting bail to the respondent Nos. 1

and 2 is correct and unassailable; cogent reasons have been given by the Sessions Court while granting bail to respondent Nos. 1 and 2; the

respondent Nos. 1 and 2 have been in jail in judicial custody for more than 2 years and 5 months; there is no possibility of the trial commencing in

the near future on account of the fact that two of the accused are said to be absconding; as the statements of some of the witnesses were recorded

u/S. 164 Cr.P.C. there cannot be any danger of tampering of their evidence by the respondent Nos. 1 and 2; the respondent Nos. 1 and 2 hail

from respectable families and there cannot be any apprehension that they would abscond; admittedly, there is no confession made by respondent

Nos. 1 and 2 and there has been no recovery of explosive substances from their possession; there is no evidence of their physical presence at the

scene of the offence and their fingerprints were also not collected from the scene of the offence; the test identification parade was held three years

after the alleged incident and it is not possible for any witness to identify a person whom he had seen once three years before; when the respondent

Nos. 1 and 2 were arrested their photos were published in all the newspapers after the Ajmer blast and therefore, the test identification parade

itself has no evidentiary value; the whole basis of the case of the prosecution is the alleged confession of A.6; the CBI had selectively leaked this

confession to the press and a contempt petition is filed in the Delhi High Court and it is pending there; and the only allegation against the

respondents is that they had given shelter and beyond that what role they played in the blasts at Mecca Masjid is not stated by the prosecution. It

is not the allegation of the prosecution that respondent Nos. 1 and 2 have triggered them; one Tejo Ram who had been recently arrested and

shown as A.9 is alleged by the prosecution to be the person who planted the Sim bombs at the Mecca Masjid; LW. 73 and 74 spoke of purchase

of a cell phone Nokia 6030 by the 2nd respondent; admittedly, the said sale is not evidenced by any invoice/ bill; there is nothing to link the

accused with the said purchase of cell phone; it is not as if the RSS, an organization in which the accused are members is a banned organization or

a terrorist organization notified in the Schedule to the Unlawful Activities (Prevention) Act, 1967; merely, because the accused are members of the

said organization, they cannot be prosecuted; and therefore, prayed that the order of the Sessions Court be confirmed.

11. The learned senior counsel also took us through the confession statement of A.6-Swami Aseemanand, recorded u/S. 164 Cr.P.C. by the

Court of SH. Deepak Dabas, Munsif Magistrate Central - 04, Delhi in detail.

12. We have noted the submissions of the respective parties.

13. Before we deal with the respective contentions, we wish to state that an order granting or refusing bail to an accused in a criminal case is

essentially an interlocutory order [see Usmanbhai Dawoodbhai Memon and others v. State of Gujarat and Puran (8 supra)]. Under S. 21 of the

National Investigation Agency Act, 2008, appeals are provided against the judgment/sentence or order of a special court, not being an

interlocutory order, to the High Court both on facts and on law. But sub-section (4) of Section 21 specifically provides that an appeal shall lie to

the High Court against an order of the Special Court granting or refusing bail notwithstanding anything contained in sub-section (3) of Section 378

of Cr.P.C. In view of this, the order of the Sessions Judge granting bail to respondent Nos. 1 and 2 is appealable to the High Court. A similar view

has also been taken by this Court in an un-reported judgment NIA v. Mohmed Anwar Shak and another. In the said judgment it was also held that

an appeal against an order granting or refusing bail passed by a special court would lie to a Division Bench of the High Court. Therefore, we hold

that the present appeal challenging the order of the Sessions Judge granting bail to respondent Nos. 1 and 2 is maintainable and that the said

appeal would lie to a Division Bench of the High Court.

14. Now we shall consider whether the order of the Sessions Court impugned herein is valid in law.

15. It is settled law that while dealing with an application for bail, there is a need to indicate in the order, the reasons for prima facie concluding

why bail was being granted particularly where an accused was charged of having committed a serious offence. Some of the circumstances which

should be considered for granting bail to an accused are:

(a) the nature of accusation and the severity of punishment in case of conviction and the nature of supportive evidence;

(b) reasonable apprehension of tampering of witnesses or apprehension of threat to the complainant;

(c) prima facie satisfaction of the court in support of the charge;

(d) though a conclusive finding in regard to points urged by the parties is not expected of the court considering the bail application, some reasons

for prima facie concluding why bail was being granted are required to be indicated.

16. In Puran (8 supra), the Court pointed out:

Mr. Lalit next submitted that once bail has been granted it should not be cancelled unless there is evidence that the conditions of bail are being

infringed. In support of this submission he relies upon the authority in the case of Dolat Ram v. State of Haryana. In this case it has been held that

rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on

different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail

already granted. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the

due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused

in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such

ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime

of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that

such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact

on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of

cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation.

(emphasis ours)

17. In Ram Govind Upadhyay (5 supra), the Supreme Court decreed:

3. Grant of bail though being a discretionary order-but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of

course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the

contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused

in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought

always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the

grant of bail-more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the

matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however,

the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation

entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also

weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be

a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of

grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is

entitled to an order of bail.

5. A recent decision of this Court in Prahlad Singh Bhati v. NCT, Delhi lends concurrence to the observations as above.

18. In Kalyan Chandra Sarkar (4 supra), the Supreme Court stated:

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and

not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the

case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly

where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.

It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas)

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application

for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the

opinion that bail has to be granted then the said court will have to give specific reasons why in spite of such earlier rejection the subsequent

application for bail should be granted. (See Ram Govind Upadhyay.)

In the said case, the Court held that when an accused is charged of offences punishable with life imprisonment or even death penalty, mere fact that

he had undergone certain period of incarceration (in that case 3 1/2 years) by itself would not entitle him to be enlarged on bail, nor the fact that

trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the

accused on bail when there are allegations of tampering with the witnesses by him during the period he was on bail.

19. In Lokesh Singh (6 supra), the Supreme Court held that while dealing with an application for bail, there is need to indicate in the order, reasons

for prima-facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It further

held that an order granting bail de hors such reasons suffers from non-application of mind.

20. In Dhanendra Shriram Bhurle (1 supra), the above principles were reiterated.

21. In Union of India v. Mohan Lal Capoor and others, the Supreme Court held that reasons are the links between the materials on which certain

conclusions are based and the actual conclusions. They should disclose how the mind is applied to the subject matter or a decision, whether it is

purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this

way can opinions or decisions recorded be shown to be manifestly just and reasonable.

22. In S.N. Mukherjee and Union of India, a Constitution Bench of the Supreme Court held that a quasi-judicial authority must record reasons for

its decision as the recording of reasons would: (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimize

chances of arbitrariness in decision-making. It also held recording of reasons would facilitate exercise of jurisdiction by appellate or supervisory

authority and would indicate that the authority had given due consideration to the points in controversy.

23. A reading of the impugned order shows that no reasons have been given by the Sessions Judge for granting bail to the respondent Nos. 1 and

2. After extracting the contentions and referring to the provisions of the Unlawful Activities (Prevention) Act, 1967 and the judgment of the

Supreme Court in Sanjay Chandra v. CBI, the learned Sessions Judge states ""it is true there are reasonable grounds for believing that the

accusations are prima facie true."" There is no reference to the allegations made against the respondent Nos. 1 and 2 in the charge-sheet filed by the

NIA or the material collected by the CBI during the investigation conducted by it. As regards the involvement of the respondent Nos. 1 and 2 in

the said offence, at the stage of granting bail, no doubt a detailed examination of evidence and elaborate documentation of the merits of the case is

not to be undertaken. But this does not mean that while granting bail some reasons for prima facie concluding why bail was being granted are not

required to be indicated. Thus the order of the Sessions Court impugned herein is clearly vitiated on the ground that it has not given any reasons as

to why it was granting bail to the accused.

24. As the respondent Nos. 1 and 2 are alleged to have committed offences under S. 13 and 15 of the Unlawful Activities (Prevention) Act, 1967,

the Court below should also have kept in mind the proviso to sub-section (5) of Section 43(D) of the said Act. S. 43(D) of the Unlawful Activities

(Prevention) Act, 1967 states as follows:

43(D). Modified application of certain provisions of the Code:

(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable

offence within the meaning of clause (c) of Section 2 of the Code, and ""cognizable case"" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in

subsection (2), --

(a) the references to ""fifteen days"", ""ninety days"" and ""sixty days"", wherever they occur, shall be construed as references to ""thirty days"", ""ninety

days"" and ""ninety days"" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:--

Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the

report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said

period of ninety days, extend the said period up to one hundred and eighty days.

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from

judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for

requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that -

(a) the reference in sub-section (1) thereof -

(i) to ""the State Government"" shall be construed as a reference to ""the Central Government or the State Government"",

(ii) to ""order of the State Government"" shall be construed as a reference to ""order of the Central Government or the State Government, as the case

may be""; and

(b) the reference in sub-section (2) thereof, to ""the State Government"" shall be construed as a reference to ""the Central Government or the State

Government, as the case may be"".

(5) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an

offence punishable under this Act.

(6) 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 the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made

u/s 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against the person is prima facie true.

(7) The restrictions on granting of bail specified in sub-section (6) is in addition to the restrictions under the Code or any other law for the time

being in force on granting of bail.

(8) Notwithstanding anything contained in sub-sections (6) and (7), no bail shall be granted to a person accused of an offence punishable under this

Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to

be recorded in writing.

Thus, proviso to sub-section (5) of S. 43-D (wrongly shown as sub-section (6) in the text of the Act) prohibits the grant of bail to an accused if, on

a perusal of the case diary or the report made u/S. 173 of Cr.P.C., the court is of the opinion that there are reasonable grounds for believing that

the accusation against a person is prima facie true.

25. In Jibangshu Paul (12 supra), the High Court of Assam interpreted sub-Section 5 of Section 43(D) as follows:

87. A bare reading of Sub-Section (5) of Section 43D shows that apart from the fact that Sub-Section (5) bars a Special Court from releasing an

accused on bail without affording the Public Prosecutor an opportunity of being heard on the application seeking release of an accused on bail, the

proviso to Sub-Section (5) of Section 43D puts a complete embargo on the powers of the Special Court to release an accused on bail by laying

down that if the Court, on perusal of the case diary or the report made u/s 173 of the Code of Criminal Procedure, is of the opinion that there are

reasonable grounds for believing that the accusation, against such person, as regards commission of offence or offences under Chapter IV and/or

Chapter VI of the UA(P) Act is prima facie true, such accused person shall not be released on bail or on his own bond.

88. Thus, if the Special Court, on perusal of the case diary, forms an opinion that there are reasonable grounds for believing that the accusation,

against an accused person, of the commission of offences or offences under Chapter IV and/or Chapter VI is prima facie true, it will not remain

within the powers of the Court to grant bail in such a case. This position is further made clear by Sub-Section (6) of Section 43D, which lays down

that the restrictions, on granting of bail specified in sub-section (5), are in addition to the restrictions under the Code of Criminal Procedure or any

other law for the time being in force on granting of bail. The logical conclusion would, therefore, be that in a case, investigated by the agency, if the

Special Court forms an opinion that there are reasonable grounds for believing that the accused has committed an offence punishable with death or

imprisonment for life, the Special Court would have no jurisdiction to grant bail to such an accused except as may be provided by law.

.....

98. Coupled with the above, it is also noticeable that the proviso to Section 43-D(5) does not require a positive satisfaction by the court that the

case against the accused is true. What is required is a mere formation of opinion by the court on the basis of the materials placed before it. The

formation of opinion cannot be irrational or arbitrary. Such formation of opinion cannot be based on surmises and conjectures; but must rest on the

materials collected against the accused. Since the presumption of innocence runs in favour of the accused, it logically follows that if there are, in

given circumstances, grounds for believing that the case, against the accused, is true, a case of commission of offence under Chapter IV or Chapter

VI of the UA(P) Act, 1967, cane be said to have been made out and when such a case is made out, it would be tantamount to saying that

reasonable grounds exist for opining that the accusations are prima facie true. In such a case, the bar, imposed by the proviso to Section 43-D(5)

on the court''s power to grant bail, gets attracted.

.....

122. It needs to be noted, at this stage, that the accused was released on bail, on 26.02.2009, by the learned District Magistrate, NC Hills, acting

as a Judicial Magistrate u/s 437 Cr.P.C. barely within a period of two weeks, but what were the considerations for bail. The learned Magistrate

had observed, for the purpose of granting bail, that the co-accused were on bail, the accused was ready to co-operate with the police during

investigation and there is no chance of his absconding as he is a local person and that his release on bail is not likely to adversely affect

investigation. The considerations, which prevailed upon the learned Magistrate, while granting bail, were contrary to the Full Bench decision of this

Court in Re-State of Assam (suo moto), reported in In Re: State of Assam and Another, , which we have referred to, and which clearly lays down

that if there is a "reasonable ground" for holding that the accused has committed an offence, which is punishable by death or imprisonment for life,

the Magistrate has no power to grant him bail unless the case of the accused falls within one or more of the exceptions embodied in the proviso to

Section 437 Cr.P.C.

(emphasis ours)

26. In the present case also, the Sessions Judge had held that there are reasonable grounds for believing that the accusations against the accused

are prima facie true, yet he granted bail. Although this finding is not supported by reasons (as held by us supra), we are of the opinion that if there

are reasonable grounds for believing that the accusations are prima facie true, in view of proviso to sub-Section (5) of Section 43D, the accused

are not entitled to grant of bail. The Sessions Judge noticed the proviso to Sub-section (5) to S. 43D but perversely held, referring to sub-Section

(7) of Section 43D that if persons who are not citizens of India can get bail in exceptional circumstances, citizens of India are certainly entitled to

grant of bail and the law does not contemplate prohibition to grant of bail forever to citizens of India. In our opinion, it is not open to the Sessions

Court to interpret the provisions of Section 43D in this manner and this reasoning is clearly erroneous.

27. In People''s Union for Civil Liberties (3 supra), certain observations were made by the Supreme Court of India while considering the

provisions of the Prevention of Terrorism Act, 2002. The Supreme Court stated:

4. ...Terrorism has become the most worrying feature of contemporary life. Though violent behaviour is not new, the present-day ""terrorism"" in its

full incarnation has obtained a different character and poses extraordinary challenges to the civilised world. The basic edifices of a modern State,

like democracy, State security, rule of law, sovereignty and integrity, basic human rights etc. are under the attack of terrorism....

.....

8. These terrorist strikes have certain common features. They could be very broadly grouped into three:

1. Attack on the institution of democracy, which is the very basis of our country (by attacking Parliament, Legislative Assembly etc.). And the

attack on economic system by targeting economic nerve centres.

2. Attack on symbols of national pride and on security/strategic installations (e.g. Red Fort, military installations and camps, radio stations etc.).

3. Attack on civilians to generate terror and fear psychosis among the general populace. The attack at worshipping places to injure sentiments and

to whip communal passions. These are designed to position the people against the Government by creating a feeling of insecurity.

9. Terrorist acts are meant to destabilise the nation by challenging its sovereignty and integrity, to raze the constitutional principles that we hold

dear, to create a psyche of fear and anarchism among common people, to tear apart the secular fabric, to overthrow democratically elected

government, to promote prejudice and bigotry, to demoralise the security forces, to thwart the economic progress and development and so on.

This cannot be equated with a usual law and order problem within a State. On the other hand, it is inter-State, international or cross-border in

character. Fight against the overt and covert acts of terrorism is not a regular criminal justice endeavour. Rather, it is defence of our nation and its

citizens. It is a challenge to the whole nation and invisible force of Indianness that binds this great nation together. Therefore, terrorism is a new

challenge for law enforcement. By indulging in terrorist activities organised groups or individuals, trained, inspired and supported by fundamentalists

and anti-Indian elements are trying to destabilise the country. This new breed of menace was hitherto unheard of. Terrorism is definitely a criminal

act, but it is much more than mere criminality. Today the Government is charged with the duty of protecting the unity, integrity, secularism and

sovereignty of India from terrorists, both from outside and within the borders. To face terrorism we need new approaches, techniques, weapons,

expertise and of course new laws. In the above said circumstances Parliament felt that a new anti-terrorism law is necessary for a better future.

This parliamentary resolve is epitomised in POTA.

10. The terrorist threat that we are facing is now on an unprecedented global scale. Terrorism has become a global threat with global effects. It has

become a challenge to the whole community of civilised nations. Terrorist activities in one country may take on a transnational character, carrying

out attacks across one border, receiving funding from private parties or a Government across another and procuring arms from multiple sources.

Terrorism in a single country can readily become a threat to regional peace and security owing to its spillover effects. It is, therefore, difficult in the

present context to draw sharp distinctions between domestic and international terrorism. Many happenings in the recent past caused the

international community to focus on the issue of terrorism with renewed intensity. The Security Council unanimously passed Resolutions Nos. 1368

(2001) and 1373 (2001); the General Assembly adopted Resolution No. 56/1 by consensus, and convened a special session. All these resolutions

and declarations inter alia call upon member States to take necessary steps to ""prevent and suppress terrorist acts"" and also to ""prevent and

suppress the financing of terrorist acts"". India is a party to all these resolves. Anti-terrorism activities on the global level are mainly carried out

through bilateral and multilateral cooperation among nations. It has thus become our international obligation also to pass necessary laws to fight

terrorism.

.....

15. The protection and promotion of human rights under the rule of law is essential in the prevention of terrorism. Here comes the role of law and

court''s responsibility. If human rights are violated in the process of combating terrorism, it will be self-defeating. Terrorism often thrives where

human rights are violated, which adds to the need to strengthen action to combat violations of human rights. The lack of hope for justice provides

breeding grounds for terrorism. Terrorism itself should also be understood as an assault on basic rights. In all cases, the fight against terrorism must

be respectful to the human rights. Our Constitution laid down clear limitations on State actions within the context of the fight against terrorism. To

maintain this delicate balance by protecting ""core"" human rights is the responsibility of court in a matter like this. Constitutional soundness of POTA

needs to be judged by keeping these aspects in mind.

28. Admittedly the allegation against the respondents is that they have hatched a conspiracy with the other persons for causing explosions in the

Mecca Masjid, Hyderabad and in other places and that they are alleged to be involved in unlawful activities and terrorist acts as defined in Section

13 and 15 of the Unlawful Activities (Prevention) Act, 1967. Therefore while considering the application for grant of bail by the respondents, the

Sessions Court should have kept these considerations in mind but a reading of the impugned order does not indicate that the seriousness of the

allegations was properly considered.

29. The observations made by the Sessions Court that the respondent Nos. 1 and 2 are unlikely to tamper with the evidence of the witnesses is

also perverse for the reason that their statements were already recorded u/S. 164 Cr.P.C. As such, there is no question of tempering with the

evidence of the witnesses whose statements were recorded u/S. 164 Cr.P.C.

30. In view of the fact that the Sessions Court has not considered the parameters for grant of bail and did not apply it''s mind to the other

considerations set out above including the provisions of the Unlawful Activities (Prevention) Act, 1967, the impugned order is set aside. The matter

remitted back to the designated court for trial of offences under the National Investigating Agency Act, 2008 (for short "the designated court") to

consider afresh whether the respondents herein are entitled to grant of bail in the light of the principles set out above. Although both parties have

raised several contentions touching the merits of the case with regard to grant of the bail and for cancellation of the bail, we make it clear that we

have not expressed any opinion on the said issue as the matter is being remitted back to the designated court. It shall pass a fresh reasoned order

after considering the matter within 6 weeks from the date of receipt of a copy of this order. It is open to the designated court to consider not only

the material on record before it but also any subsequent material procured till date by the appellant suggesting the involvement of Respondent Nos.

1 and 2 in the offences alleged against them in this case and also in any other case. For the above reasons, the Criminal Appeal is allowed; the

order dated dt. 26.11.2012 in Crl. M.P. No. 569 of 2012, vide Spl. Sc. No. 1 of 2011 of CBI Police Station in NIA Cr. No. 2 of 2011, is set

aside and the matter is remitted back to the designated court for trial of offences under the National Investigating Agency Act, 2008 (Ist Additional

Metropolitan Sessions Judge-cum-Special Court for NIA Cases), Nampally, Hyderabad, to pass a fresh order in the light of the observations

made above and in accordance with law.