

(2012) 08 AP CK 0029

Andhra Pradesh High Court

Case No: Criminal Petition No. 5661 of 2012

Mohammed Arifuddin Rahman

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision: Aug. 6, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 167(2)
- Explosive Substances Act, 1908 - Section 4
- Passports Act, 1967 - Section 10(3), 10A
- Penal Code, 1860 (IPC) - Section 143, 153, 153A, 295A, 304B

Citation: (2012) 2 ALD(Cri) 507 : (2012) 3 ALT(Cri) 312 : (2013) CriLJ 1036

Hon'ble Judges: Samudrala Govindarajulu, J

Bench: Single Bench

Advocate: Prabhakar Sripada, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Samudrala Govindarajulu

1. The petitioner/A.3 questions order dated 10.04.2012 passed by the VII Additional Metropolitan Sessions Judge, Hyderabad in CrI.M.P. No. 1046 of 2012 in Cr. No. 268 of 2000 of Malakpet Police Station, Hyderabad. The petitioner is accused of offences punishable u/s 4 of the Explosive Substances Act, 1908 and Section 153-A IPC along with two others. He was arrested on 07.09.2011 by the Investigating Officer and the lower Court granted bail to the petitioner on 21.11.2011 u/s 167(2) Cr. P.C. Though in the impugned order, the lower Court stated that the passport was not seized in this case, the said observation is not correct factually. The remand case dairy dated 07.09.2011 reads that the Investigating Officer seized passport of the petitioner after his arrest in this case. Complaint of the petitioner's counsel is that though the

offence was detected on 02.11.2000, till today the police did not prefer to file charge sheet. This is a case where there was attempt to cause explosion by keeping a time bomb near Sri Sai Book Stall which is very near to Hanuman Temple, Dilsukhnagar Bus stop, Hyderabad with an intention to endanger lives of public and property in order to develop enmity between religions to bring disharmony and to disturb public tranquility. Fortunately, location of the time bomb in a bag was detected. It is only after arrest of A.3 on 07.09.2011, it came to light that A.1 to A.3 was responsible for placing time bomb. According to the prosecution, A.1 to A.3 are close associates of Darsgah-e-Jehad-o-Shahadat (DJS) and that after demolition of Babri Masjid, they decided to take revenge against the Hindus and that in pursuance of their plan, they prepared an IED bomb in a thickly populated area near Hanuman Temple where Hindu population is dominated and that on 01.11.2000, A.1 and A.2 prepared a bomb which works on timer device and placed it in a bag and that A.1 and A.3 took the bomb on motor cycle of A.3 and placed it in front of a book stall near Hanuman Temple, but the bomb did not explode. A.3 was arrested on 18.08.2001 in another crime under Sections 143, 153, 153-A and 295A IPC and was subsequently released on bail. According to the prosecution, subsequent to release from jail, A.3 had been to Dammam of KSA and settled there while working in different institutions. While so, A.1 and A.2 died in exchange of fire (EOF) with the police on 23.11.2002 and 24.11.2002 at Uppal and Karimnagar respectively and that thinking that he may be arrested, A.3 did not come to India upto the year 2009 and that in the year 2009, he came to India once secretly and again on 26.08.2011 he came to Hyderabad to celebrate Ramzan festival along with his family members, during which time he was arrested on 07.09.2011. It is stated by the Additional Public Prosecutor that investigation of the case is completed and the Investigating Officer addressed the Government of Andhra Pradesh for issuing of sanction for prosecution for the offence u/s 153-A IPC and that the matter is pending with the Government for grant of sanction and that as soon as sanction is obtained, the Investigating Officer will file the charge sheet in this case. Therefore, the complaint of the petitioner's counsel about long delay from the year 2000 in filing charge sheet in this crime is unwarranted. The police could arrest A.3 only in the year 2009 as he left India to Saudi Arabia in order to evade his arrest in this case and in other cases.

2. According to A.3, he is working as Salesman in a Steel Trading Company in Saudi Arabia. The petitioner's counsel stated that A.3's VISA to Saudi Arabia will expire on 02.10.2012. It is further contended that the petitioner acquired certain movable properties in Saudi Arabia like a four wheeler and others and that in case he did not go to Saudi Arabia within the above period, then he would lose his job as well as his livelihood in Saudi Arabia along with his movables. Placing reliance on *Suresh Nanda v Central Bureau of Investigation* (2008) 3 Supreme Court Cases 674 of the Supreme Court, it is contended by the petitioner's counsel that seizing passport by the Investigating Officer amounts to impounding of the same and that the Police Officer has no authority to impound a passport u/s 10(3) and Section 10A of the Passports

Act, 1967 and that the Police Officer after seizing the passport has to take steps before the Regional Passport Authority for impounding the passport and that no such steps are taken in this regard and that it would be unconstitutional if the petitioner is denied permission to travel abroad for pursuing his livelihood. Purport of the impugned order passed by the lower Court is not legality of seizing the passport and retaining the same with the police without taking steps before the Regional Passport Authority for impounding the same under Sections 10(3) and 10A of the Passports Act, 1967. The petitioner had only prayed for return of the passport and relax condition of bail permitting to go to Saudi Arabia.

3. It is contended by the Additional Public Prosecutor that in case, the petitioner leaves India for Saudi Arabia, there is every likelihood of the petitioner not returning to India in the near future in order to avoid pending criminal cases against him. In case, the petitioner goes to Saudi Arabia and refuses to return to India within the time allowed, then there is no way to secure his presence in India for facing trial in this case, as it is informed that there is no extradition treaty for India with Saudi Arabia. Therefore, even if petitioner's passport is ordered to be released to the petitioner, he may not be in a position to travel abroad to Saudi Arabia unless the Court grants permission to leave India. In view of the communal criminal background of the petitioner and his previous conduct of evading from arrest from the year 2000 onwards till the year 2011 by going away to Saudi Arabia, I agree with the lower Court that he may not be come back to India to face trial in this case, in case he is granted permission to leave India to Saudi Arabia for his livelihood.

4. In Suresh Nanda (supra) of the Supreme Court, the petitioner therein settled in United Kingdom for the past 23 years since before registration of F.I.R. in the year 2006 against the accused. In Pawan Kumar v State of Rajasthan 2000 CRI.LJ.4325 of Rajasthan High Court, the person who was accused of the offences under Sections 304-B and 498-A IPC was eking out his livelihood at Kuwait even prior to commission of the offences therein. Whereas in the case on hand, the petitioner/A.3 had left India for Saudi Arabia after commission of communal offences allegedly. In that back ground, the petitioner cannot be permitted to leave India, pending criminal proceedings. In the result, the Investigating Officer is directed to submit seized passport of the petitioner/A.3 to the Magistrate along with the charge sheet and the Investigating Officer will be at liberty to take steps for impounding the petitioner's passport u/s 10(3) or u/s 10-A of the Passports Act, 1967 through Court immediately thereafter. Subject to the same, the Criminal Petition is dismissed.