

(2012) 03 DEL CK 0469

Delhi High Court

Case No: Bail Application 1322 of 2011

Kanchan Mishra @ Anu

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

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**Date of Decision:** March 12, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 19, 21
- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Terrorist and Disruptive Activities (Prevention) Act, 1987 - Section 3(5)
- Unlawful Activities (Prevention) Act, 1967 - Section 10, 13, 18, 20, 43(D)(5)

**Citation:** (2012) 3 AD 95 : (2012) 130 DRJ 646**Hon'ble Judges:** Mukta Gupta, J**Bench:** Single Bench**Advocate:** V.K. Ohri, Mr. Vivek Bishnoi and Mr. Pawan Madan, for the Appellant; Mukesh Gupta, APP with SI Girish Kumar, for the Respondent

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**Judgement**

Mukta Gupta, J.

By the present application the Petitioner seeks bail in case FIR No. 23/2010 under Sections 10/13/18/20 of the Unlawful Activities (Prevention) Act, 1967 (in short the Act) registered at P.S. Special Cell. Learned counsel for the Petitioner contends that the Petitioner was arrested being the wife of Gopal Mishra, allegedly member of banned terrorist organization namely Communist Party of India (Maoist) and is in judicial custody since 27th April, 2010. It is stated that besides the disclosure statement of the Petitioner, there is no evidence available with the investigating agency. The recovery of all the alleged incriminating articles including the documents, laptop etc. was from the husband of the Petitioner or from their house. The said possession cannot be attributed as the conscious possession of the Petitioner. Relying upon the decisions of the Hon'ble Supreme Court in Arup Bhuyan vs. State of Assam (Crl. Appeal No. 389/2007 decided on 3rd February, 2011) and Sri Indra Dass vs. State of Assam (Crl. Appeal No. 1383/ 2007 decided on 10th

February, 2011) it is contended that unless the activities of the Petitioner are violent in nature or they incite people for violence or create public disorder, the accused cannot be convicted for being merely a member of the banned organization. Out of 25 witnesses, evidence of 12 witnesses have already been recorded. No public witness remains to be examined and thus, there is no apprehension that the evidence would be tampered with. In the present case, there is no evidence against the Petitioner and hence bail be granted to her.

2. Learned APP for the State on the other hand contends that the Petitioner has been charged for offences u/s 13/18/20 of the Act. From the excerpts of the register and the documents, it is apparent that the Petitioner not only followed the ideologies of the banned organization but also was an active member thereof as the hand-writing on the said documents has been proved to be in the hand-writing of the Petitioner. Further, in view of the bar u/s 43(D)(5) of the Act, no bail can be granted unless this Court is prima facie of the opinion that the Petitioner is not an accused of the offences alleged. Hence the bail be dedined.

3. I have heard learned counsel for the parties. The abovementioned FIR was registered on an information received from Central Intelligence Agency that one Ashwani, member of a banned organization CPI(M) would come near Shyam Lal College to meet his contact at 11.00 AM. On a raiding party being constituted, it was found that the said Ashwani Kumar along with a hand bag containing material was waiting for someone, however when he started moving from the said place, he was apprehended and on enquiry his name was revealed to be Gopal Mishra @ Ashwani @ Sameer. It was also revealed that presently the said person was living at Budh Bazar, New Modem, Shahdara, Delhi. The black colour hand bag appeared to be a laptop bag which had one CD as well along with material relating to banned organization CPI(M) such as mouth-piece magazine of CPI (Maoist), annual report of Northern Regional Bureau CPI (Maoist) etc. On checking, the CD & laptop were found to be containing material relating to CPI (Maoist). Thus, the entire material was seized. On further enquiry, Gopal Mishra admitted himself to be an active member and city organizer for Delhi Region of CPI(M) to motivate the working class people to join CPI(M) cadre. Thus, on the written complaint of Inspector Devender Singh, the abovementioned FIR was registered. During enquiry, he stated that the hand-written material regarding party activities was written by his wife Kanchan, Bala, who was also a full time party worker working for CPI(Maoist). Thus, the Petitioner the wife of Gopal Mishra was made to join the investigation and after verifying the fact, she was arrested. Further hand-written material was also got recovered from the Petitioner's residence. Most of the events of the party meetings were in the hand-writing of the Petitioner.

4. As per the status report, it is stated that other persons working for banned terrorist organization CPI(M) having connection with the Petitioner were also arrested in different parts of U.P. in a separate FIR. On filing of charge-sheet, charge

under Sections 13/18/20 of the Unlawful Prevention Act, 1967 has been framed against the Petitioner. A perusal of the copies of the documents annexed with the present petition shows that the Petitioner has been organizing the cadres, looking after and organizing various activities including public meetings etc. In view of the report of the FSL, a number of documents have been found to be in the hand-writing of the Petitioner, which state about the detailed activities to be carried out and regarding organizing the activities of the banned organization.

5. It may be noted that Section 43(D)(5) provides that a person accused of an offence under this Act shall not be released on bail, if on a perusal of the case diary or the report u/s 173 of the Cr.P.C., the Court is of the opinion that there are reasonable grounds for believing that the accusation against that person are prima facie true. The evidence on record and the FSL report proves that a substantial portion of the said literature is in the hand-writing of the Petitioner herein. Though some of the documents recovered show incitement even towards violence, however the documents in the hand-writing of the Petitioner do not reveal incitement for violent activities. The Hon"ble Supreme Court in Arup Bhuyan (supra) in relation to Section 3(5). of Terrorist and Destructive Activities Act (TADA) held that it cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution and that mere membership of a banned organization will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence.

6. In the facts and circumstances of the case, I deem it fit to grant bail to the Petitioner. It is therefore directed that the Petitioner be released on bail on her furnishing a personal bond in the sum of Rs. 1,00,000/- with two sureties of the like amount, subject to the satisfaction of the learned Trial Court/ CMM. The Petitioner will not leave NCT of Delhi without the prior permission of the Court. Petition is disposed of Order dasti.