

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
ANAND CHINTAMAN DIGHE

DATE OF JUDGMENT 02/05/1991

BENCH:
FATHIMA BEEVI, M. (J)
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FATHIMA BEEVI, M. (J)
AHMADI, A.M. (J)

CITATION:
1990 AIR 625 1990 SCR (1) 73
1990 SCC (1) 397 JT 1990 (1) 28
1990 SCALE (1) 25

ACT:

The terrorists and Disruptive Activities (Prevention) Act, 1987: Sections 3 and 4-Bail-Grant of-By the Designated Court-Validity of-Appreciation of evidence collected at the investigating stage, fore-closing the trial-Whether proper.

HEADNOTE:

The respondent was arrested by the police in connection with the murder of a Corporator, under Sections 147, 148, 149, 302 read with 120-B of the Indian Penal Code and Sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. The prosecution alleged that the respondent conspired and hatched the plot to murder the deceased. This was based on the respondent's repeated statement to the Press, which were also published in the local newspaper/magazine and interview given to another paper, dubbing those party Corporators who had voted against the respondent's party candidates for the offices of the Mayor and Deputy Mayor of the local civil body, resulting in their defeat as traitors and threatening them with death.

The Designated Court, released the respondent on bail, but this Court cancelled the bail. Thereafter, the respondent moved another application for bail before the Designated Court, which granted bail on the view that from the newspaper reports it could not be assumed or inferred that the respondent was in any manner involved in the conspiracy, that there was no justification to record the First Information Report, that the statements of witnesses recorded by the investigating officer, could not be relied upon.

Allowing the appeal preferred by the State, this Court HELD: 1.1 The police investigation prima facie shows that mafia-type terror and fear psychosis was created which led to the cold-blooded murder of the deceased. The Judge, Designated Court acted illegally in appreciating the statements of witnesses and material collected by the investigating officer at the investigation stage. He should have dealt with the same in accordance with law. [623F]

1.2 The Judge virtually pre-empted the trial by delivering the judgment on the culpability of respondent. The Judge grossly erred in

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fore-closing the trial by pre-judging the evidence which was yet to come on record. No doubt, while cancelling the bail order, this Court observed that the cancellation of bail was without pre-judice to the rights of the respondent to move the Designated-Court for bail at any subsequent stage, but that was only in the event of any further evidence being recorded by the court or any fresh material being made available during the investigation or before the court. This Court also directed that it was necessary for the Designated-Court also directed that it was necessary for the Designated-Court to consider further material collected by the investigating agency, by recording statements of witnesses. The Designated-Court did not record any evidence and there was no fresh material available before the Court. The Judge, Designated-Court, by putting his own gloss over the same material has again granted bail to the respondent. The manner in which the Judge has dealt with the matter cannot be appreciated. [623D-E]

1.3 The bail granted to the respondent is accordingly cancelled. [623G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 336 of 1991.

From the Judgment and Order dated 8.2.1990 of the Designated Court, Pune in CrI. Misc. Application No.5 of 1990.

V.V. Vage, V.N. Patil and A.S. Bhasme for the Appellant.

R.K. Jain, P.M. Hedge, Satish Samant and Kailash Vasdev for the Respondent.

The Judgement of the Court was delivered by
KULDIPSINGH, J. Special Leave granted

Sridhar Khopkar a Shiv Sena Corporator in the Municipal Corporation Thane was murdered on April 21, 1989. The First Information Report was lodged at Waghle Police Station Thane on the same date. Anand Chintaman Dighe, the respondent before us, was arrested by the police in connection with the said case on charges under sections 147, 148, 149, 302 read with 120-B of the Indian Penal Code and Sections 3 and 4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987. The allegations against Dighe are that he conspired and hatched the plot to murder Sridhar Khopkar.

The prosecution case is that election to the office of Mayor and Deputy Mayor, Municipal Corporation Thane, was held on March 20, 1989. The Sena party, majority in the Corporation, was expecting

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to win the election. The party was, however, defeated. The defeat was imputed to the cross-voting on the part of one or two members of the Shiv Sena. The said cross voting had angered the Shiv Sena leaders. The cross-voters were dubbed as traitors. It is alleged that Dighe had issued repeated statements to the press saying that the traitors' life would be made difficult and probably they would be killed. These statements were published in Marathi Daily "Navakal" dated March 22, 1989 and were repeated in a weekly magazine "Lokprabha" on April 9, 1989. Again in an interview to Daily "Urdu Times" dated April 16, 1989 the respondent Dighe had asserted that he knew the names of the traitors but could not disclose the same. He had also asserted in the said statement that the punishment of

traitors was death and it would be difficult for them to survive.

The learned Judge, Designated court, Pune, by his order date April 18, 1989 released Dighe on bail. This Court by an order dated January 16, 1990 cancelled the bail with the following observations:

"In the present case the learned Judge observed that it is a case of respectable person of a big political organisation, his freedom cannot be curtailed if he is entitled to bail. His liberty cannot be curbed if enlarged on bail and, therefore, no kind of condition is required to be imposed. The Court also observed that being a leader of the big political organisation one cannot expect that the respondent will commit any offence if enlarged on bail and he cannot be called to be a criminal. The learned Judge was obsessed by the fact that the respondent was associated with a political party and was oblivious of the nature of the allegations made against him and the relevant materials indicating that the respondent had been making utterances inciting violence. The respondent gave repeated statements to the Press saying that the traitors' life will be made difficult and probably they will be killed. This was published in Maarathi Daily 'Navakal' on 22.3.89. He repeated his threat and this appeared in an interview given to the reporter of the Weekly Magazine 'Lokprabha' in its issue of 9.4.1989. In an interview in daily 'Urdu Times' dated 16.4.1989 the respondent asserted that he knew the names of the traitors but could not disclose the same. He also asserted that the punishment for traitors is death and they would be killed and this decision has not been taken by him-

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In the backdrop of such assertions, it was necessary for the Court to consider the further materials collected by the investigating agency by recording statements of witnesses. The court below misdirected itself in refusing to look into such statements and concluding that it is a case for granting bail taking into account only the position held by the respondent in the party. The court clearly erred in disposing of the application for bail."

Thereafter Dighe moved an application before the Designated Court on January 23, 1990 for grant of time to surrender. Dighe surrendered on February 5, 1990 and on the same day he moved an application for bail before the said Court. The application was heard on February 8, 1990 and the orders were pronounced on February 9, 1990 releasing Dighe on bail. It is the said order which has been challenged before us in the appeal.

The learned Judge, Designated-Court after lengthy discussion came to the conclusion that from the newspaper reports it could not be assumed or inferred that Dighe was in any manner involved in the conspiracy. The learned Judge observed as under:

"By such statement to the press, it cannot be assumed, or no inference can be drawn as such that Shri Anand Dighe was the person who was trying to kill the traitor."

"Mere statement does not amount to any kind of conspiracy. So, this cannot be the evidence of

their agreement or meeting two minds to commit any kind of offence."

"I cannot take these newspaper cutting into consideration.

The learned Judge further discussed the First information Report and came to the findings that there was no justification to record the same. The observations of the learned Judge are as under:

"The only thing that had happened on that day, was the murder of Shri Shridhar Khopkar. He could very well register the offence that such a murder had taken place. He could not register the offence under Section 3 and 4 of the Terrorist and Disruptive (Prevention) Act, 1987-

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because he was not possessed of any kind of substantial material to register this offence. So, in short, this F.I.R. is of no use to the prosecution, at least for the purpose this offence under Section 3 and 4 of the Act, *ibid*."

The learned Judge further discussed the statements of witnesses recorded by the investigating officer. The Judge scrutinized the statements of Arun Jagtap, Smt. Sangita Khopkar and Miss Sujata Khopkar and treating those statements to be evidence before the Court, came to the conclusion that the statements could not be relied upon. The learned Judge virtually pre-empted the trial by delivering the judgment on the culpability of respondent Dighe. We are of the view that the Learned Judge grossly erred in fore-closing the trial by pre-judging the evidence which was yet to come on record.

It is no doubt correct that this court in its order dated January 16, 1990 observed that the cancellation of bail was without prejudice to the rights of Dighe to move the Designate-Court for bail at any subsequent stage, but that was only in the event of any further evidence being recorded by the Court or any fresh material being made available during the investigation or before the court. This Court also directed that it was necessary for the Designated-Court to consider further material collected by the investigating agency, by recording statements of witnesses. The Designated-Court did not record any evidence and there was no fresh material available before the Court. The learned Judge Designated-Court by putting his own gloss over the same material has again granted bail to the respondent. We do not appreciate the manner in which the learned Judge has dealt with the matter. The police investigation *prima facie* shows that mafia-type terror and fear psychosis was created which led to the cold-blooded murder of Shridhar Khopkar. The learned Judge acted illegally in appreciating the statements of witnesses and material collected by the investigating officer at the investigation stage. He should have permitted the evidence to be recorded and thereafter dealt with the same in accordance with law.

We, therefore, allow the appeal, set aside the order of the Designated-Court and cancel the bail granted to Dighe. He is directed to surrender himself to custody immediately. In case he does not so surrender within ten days from today, the Designated-court shall issue non-bailable warrant for his apprehension.

N.P.V.

Appeal allowed.

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JUDIS