

ZD

SLP(Crl.)No. 5385-5386 OF 2004

ITEM No.3

Court No. 8

SECTION II

A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 5385-5386/2004
(From the judgement and order dated 21/09/2004 in CRLP 4129&4130/04
of The HIGH COURT OF A.P AT HYDERABAD)

VASANTHI

Petitioner (s)

VERSUS

STATE OF A.P.

Respondent (s)

(With Appln(s). for bail,permission to place addl. documents on record)

(For Final Disposal)

Date : 04/05/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P.VENKATARAMA REDDI

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner (s)Mr.PS Mishra,Sr.Adv.

M/s Amitash C.Mishra,TH Vardhan,

Upendra Mishra,Dhruv K.Jha,

Manu Shanker Mishra,Adv.

For Respondent (s)Mrs.D. Bharathi Reddy,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

The appellant to be released on bail on furnishing personal bond for Rs.20,000/- and a surety for like sum to the satisfaction of the 1st Addl.Metropolitan Sessions Judge, Hyderabad.

[Naresh Kumar]

Court Master

[Pushap Lata Bhardwaj]

Court Master

[Reportable Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 668-669 OF 2005

(Arising out of SLP(Cr) Nos.5385-5386/2004)

VASANTHI... Appellant

Vs.

STATE OF ANDHRA PRADESH... Respondent

Leave granted.

The appellant was arrested on 21st February, 2004 for involvement in an offence under Section 120-B read with Sections 364(A), 341, IPC and Section 3(4) of The Andhra Pradesh Control of Organized Crime Act, 2001 (for short 'The Act'). The charge-sheet has since been filed in the Court of IX Metropolitan Magistrate, Hyderabad. She moved the Sessions Court for bail and on rejection, she moved the High Court. The High Court declined to grant bail on the ground that though not Section 3(4), Section 3(2) of the Act is prima facie attracted and therefore the provisions contained in Section 21(4) of the Act limiting the powers of the Court to grant bail would apply. The High Court observed that "it is not reasonably possible to conclude at this stage there are no reasonable grounds for believing that she is not guilty of the offence and that she is not likely to commit any offence while on bail. The request for bail cannot be accepted".

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Aggrieved by this Order the Special Leave Petition giving rise to the present appeal has been filed. The main allegation against the appellant is that she lent her car for being used in carrying the kidnapped boy from Hyderabad to Pune by the other accused including her daughter. It may be noted that appellant's daughter has been released on bail by the High Court.

A perusal of the charge sheet would indicate that the material against the appellant is mainly the confession said to have been made by her to the I.O. and also the confessional statement made by the co-accused by which it is sought to be established that the appellant knowingly lent her car to facilitate the commission of offence of abducting the boy.

It must be noted that the confessional statement made to the Police Officer/I.O. cannot be proved as evidence. The Act contains a special provision making the confessional statement admissible notwithstanding anything contained in the Cr.P.C. or the Indian Evidence Act provided the confession is made before a Police Officer not below the rank of Superintendent of Police. The confessional statements which are now sought to be relied upon in the charge sheet are not those recorded in accordance with Section 18(1) of the Act by the authorised officer. As far as the recovery of car is concerned, the same was seized while it was at her residence. Whether under Section 27, any part of her statement would be admissible is also not free from doubt. Learned counsel for the State sought to contend that there are certain circumstances which throw light on the appellant's

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association with A-1 and the other accused, who are organized criminals. But, these circumstances by themselves may not lead to the inference of guilt. What is required to be seen under Section 21(4) of the Act is that the Court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence of committing organized crime and that he/she is not likely to commit any offence while on bail. A provision in pari materia was construed by this Court in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra & Anr.* reported in JT 2005(4) SC 123. Justice S.B. Sinha speaking for three Judge Bench observed thus:--

"49. We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea....."

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Again in para 55 of the judgment, it was pointed out that the wording of Section 21(4) does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. As regards the second requirement, it was laid down "Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence". It was again pointed out that "the duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. The evidence recorded by the High Court while granting or rejecting bail undoubtedly would be tentative in nature. It will not have any bearing on the merit of the case and the trial court would then be free to decide the case on the basis of evidence adduced at the trial without in any manner being prejudiced thereby". If we apply the probability test that has been propounded by this Court to the facts of the present case it is difficult to reach a tentative conclusion that the appellant in all probability will be convicted of the offence. Probability of conviction, so to say, is not bright, when we leave out of consideration the confessional statements. So also, the material on record does not justify the conclusion at this

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stage that the appellant would indulge in similar offence of an organised crime if she is released on bail. As already noticed, she has been in prison for about 15 months so far. In the circumstances, we set aside the order of the High Court and direct the appellant to be released on bail on furnishing personal bond for Rs.20,000/- and a surety for like sum to the satisfaction of the Ist Addl. Metropolitan Sessions Judge, Hyderabad. The appeals are accordingly allowed.

.....J.

(P. VENKATARAMA REDDI)

.....J.

(P.P. NAOLEKAR)

New Delhi,
4th May, 2005.