A REDAUL HUSSAIN KHAN

v.

NATIONAL INVESTIGATION AGENCY
(SLP (Crl.) No.7343 of 2009)

NOVEMBER 19, 2009

B **[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]**

BAIL:

UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967:

C *ss.43-D(2)(b), 3, 13, 15 and 17 – 'Terrorist act' – Petitioner arrested on the allegations that they were sending money to an extremist organization – Said organization later declared as "unlawful association" – Pleas for granting statutory bail for non-completion of investigation within prescribed time, and that* D *the organization concerned was declared an "unlawful association" much later than the arrest of the petitioner and that the money recovered from him belonged to his mother – Held: Cannot be sustained – It cannot be said that merely because the organization concerned had not been declared as an* E *"unlawful association" when the petitioner was arrested, the said organization could not have indulged in terrorist acts or that petitioner could not have had knowledge of such activities – Prayer for grant of statutory bail has to be rejected since the Sessions Judge (Special Court) had the jurisdiction to extend* F *the time for completion of investigation – As regards as the recovery of money from the petitioner's custody, it would require further investigation into the allegations made not only against the petitioner but the other accused persons as well – Code of Criminal Procedure, 1973 – s.167.*

G CRIMINAL APPELLATE JURISDICTION : SLP (Criminal) Nos. 7343 of 2009.

From the Judgment & Order dated 19.09.2009 of the High Court of Gauhati at Guwahati in Crl. A. No.148 of 2009.

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WITH

SLP (Crl.) No. 7399 of 2009.

Pradip Ghosh, Altaf Ahmed, Azim H. Laskar, Sachin Das, Abhijit Sengupta, Rana Mukherjee, Vikash Kar Gupta, Vishal Arun, for the Appellant.

H.P. Rawal, ASG, Chinmoy Pradip Sharma, Mihir Chatterjee, S.N. Terdal, for the Respondent.

The following Order of the Court was delivered

ORDER

1. The petitioner herein was arrested on 31st May, 2009, along with one Mohit Hojai and on the same day they were produced before the Chief Judicial Magistrate, Kamrup, at Guwahati. In the forwarding report it was indicated that the ground for arresting the petitioner was that during interrogation of Mohit Hojai, who was the Chief Executive Member of the North Cachar Hills Autonomous Council, had disclosed that he was sending an amount of Rs.1 crore to an organization known as DHD(J), an extremist organization, to enable it to purchase arms and ammunitions. It was indicated that Mohit Hojai had also disclosed that he had collected Rs.30 lakhs from the petitioner under different schemes.

2. On the prayer made on behalf of the investigating agency, the Chief Judicial Magistrate, Kamrup, sent the petitioner to police custody on 31st May, 2009. After the expiry of the said period of two days, a prayer was made for extension of police custody which was allowed for a further period of two days by the learned Magistrate by his order dated 2nd June, 2009. Further prayer for custodial interrogation was rejected by the Chief Judicial Magistrate, Kamrup, who, however, granted permission to the investigating officer to interrogate the petitioner in the Central Jail, Kamrup, Guwahati. On the same day, the learned Magistrate also rejected the petitioner's prayer for grant

A of bail.

3. While the investigation was pending with the State Police, the National Investigating Agency constituted under the National Investigation Agency Act, 2008 (hereinafter referred to as "the 2008 Act") took over the investigation on 5th June, 2009 and the B case was renumbered as N.I.A. Case No.1 of 2009. A separate First Information Report was also filed by the National Investigating Agency (hereinafter referred to as "NIA) in the Court of the Chief Judicial Magistrate, Kamrup. On 6th June, 2009, the prayer made by NIA for further ten days' custody of the petitioner C was allowed by the learned Magistrate. A similar prayer made on 15th June, 2009, was rejected on 29th June, 2009. The learned Magistrate also rejected the bail application filed on behalf of the petitioner along with the co-accused. Immediately thereafter, the petitioner filed a bail application before the D Guwahati High Court and while the same was pending, the Government of India, Ministry of Home Affairs, issued a notification dated 9th July, 2009, in exercise of its powers under Section 3 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the "1967 Act"), declaring the DHD(J) E along with its factions, wings and front organizations to be an "unlawful association".

4. On 29th July, 2009, the learned Single Judge of the Guwahati High Court dismissed the petitioner's bail application on the ground of jurisdiction. The petitioner filed another bail F application before the Sessions Judge (Special Court), Kamrup, Guwahati, which was rejected on 14th August, 2009. Thereafter, on an application made by the NIA on 27th August, 2009, the Sessions Judge (Special Court), Kamrup, by its order dated 28th August, 2009 extended the period for completion of G investigation by a further period of 60 days in terms of Section 43D(2)(b) of the 1967 Act as amended, read with Section 167 Cr.P.C. The said order of the learned Single Judge, Special Court, Kamrup, was challenged by the petitioner herein before the Division Bench of the Guwahati High Court on 29th May, 2009,

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under Section 21 of the 2008 Act by way of Criminal Appeal No.148/2009. The same was dismissed on 19th September, 2009 against which the present Special Leave Petition has been filed.

5. Mr. Pradip Ghosh, learned Senior Advocate, who appeared in support of the Special Leave Petition questioned the order of the High Court and also that of the learned Sessions Judge (Special Court) mainly on two grounds. Learned counsel firstly urged that the allegations made against the petitioner in the First Information Report do not make out a case under Section 13 of the 1967 Act. He then submitted that as no case had been made out against the petitioner which would attract the provisions of Section 13 of the 1967 Act, the provisions of Section 17 also would not be attracted to the petitioner's case and accordingly, the provisions of Section 43D would have no application as far as the petitioner was concerned.

6. Mr. Ghosh urged that in order to attract the provisions of Section 17 of the aforesaid Act it would be necessary for the investigating agency to show that the petitioner had either collected funds for or provided funds to DHD(J) having knowledge that such funds were likely to be used by the said organization to commit a terrorist act.

7. Mr. Ghosh submitted that only on 9th July, 2009, long after the petitioner's arrest on 31st May, 2009, DHD(J) along with all its factions, wings and front organizations were declared to be an unlawful association. Mr. Ghosh submitted that at the point of time when the offence was alleged to have been committed by the petitioner, DHD(J) had not been so declared and it was not, therefore, possible for the petitioner to have knowledge that DHD(J) was indulging in "unlawful terrorist acts". According to Mr. Ghosh, if the provisions of Section 43D of the 1967 Act did not apply to the petitioner, the extension of the period of investigation beyond 90 days, as contemplated by Section 167(2) Cr.P.C. must be held to be illegal and the petitioner would, therefore, be entitled to the grant of statutory bail in accordance

A with the proviso to the said section.

8. Mr. Ghosh also urged that although, the two accused – (i) Phojendra Hojai and (ii) Babul Kemprai, who were intercepted and from whose possession a sum of Rs.1 crore was recovered, were granted bail, the petitioner, from whose possession a sum B of Rs.4 lakhs was seized, had been denied bail despite the fact that there was no evidence whatsoever, to connect him in any way with any "terrorist act" or "unlawful activity", as defined under Section 2(1)(k) and (o) of the 1967 Act. Mr. Ghosh also contended that the money seized from his possession was in C respect of a lease agreement entered into by his mother and he was holding the said money on her behalf.

9. Mr. Ghosh submitted that in the facts of the case, the petitioner was entitled to the privilege of bail during the pendency D of the investigation.

10. Mr. Ghosh's submissions were adopted by Mr. Altaf Ahmed, learned Senior Advocate, appearing on behalf of the petitioner in SLP(Crl.)No.7399/2009, Mohit Hojai.

E 11. The submissions made by Mr. Ghosh and Mr. Altaf Ahmed were strongly opposed by the learned Additional Solicitor General, Mr. H.P. Rawal, who contended that indulgence in terrorist acts by DHD(J) did not depend on whether it was declared as an "unlawful association" or not. Mr. Rawal submitted F that it was the commission of such terrorist acts which resulted in the said organization being declared as an "unlawful association" and the petitioner having abetted such activities, by virtue of the provisions of Section 15 of the 1967 Act, his case came squarely within the scope of Sections 13 and 17 of the said Act.

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12. Mr. Rawal submitted that although Mr. Ghosh had referred to some newspaper reports indicating that there was a possibility of amnesty being granted to the members of DHD(J), the same was yet to materialize, and, on the other hand, it also H indicated that the said organization was indulging in terrorist

activities. Accordingly, in view of the definition of "terrorist act" in Section 15 of the 1967 Act and the provisions of Sections 13 and 17 thereof, there was little doubt that even on the date when the petitioner was apprehended, DHD(J) was indulging in terrorist acts, although, it came to be declared as an "unlawful association" sometime later. Mr. Rawal urged that having regard to the above, the Special Leave Petitions filed against the order of the High court refusing to grant bail were liable to be dismissed.

13. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with Mr. Ghosh that the provisions of the Unlawful Activities (Prevention) Act, 1967, would not be attracted to the facts of the case. We are also unable to accept Mr. Ghosh's submissions that merely because DHD(J) had not been declared as an "unlawful association" when the petitioner was arrested, the said organization could not have indulged in terrorist acts or that the petitioner could not have had knowledge of such activities. Accordingly, Mr. Ghosh's submissions regarding the grant of statutory bail have to be rejected since, in our view, the learned Sessions Judge (Special Court) had the jurisdiction to extend the time for completion of the investigation.

14. As far as Mr. Ghosh's second submission is concerned, the recovery of Rs.4 lakhs from the petitioner's custody would require further investigation into the allegations made not only against the petitioner but the other accused persons as well.

15. We are not, therefore, inclined to entertain both the Special Leave Petitions and the same are, accordingly, dismissed.

R.P. Special Leave Petitions dismissed.