



# National Investigation Agency

Ministry of Home Affairs, Govt. of India



## JUDGEMENT

### KANGUJAM RAVI KUMAR SINGH V UNION OF INDIA

MANU/WB/1088/2013

Equivalent Citation: 2014CriLJ3103

IN THE HIGH COURT OF CALCUTTA

CRA Nos. 431 and 469 of 2011

Decided On: 24.12.2013

Appellants: Kangujam Ravi Kumar Singh

Vs.

Respondent: Union of India

Hon'ble Judges/Coram:

Nishita Mhatre and Indrajit Chatterjee, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Sekhar Basu, Souvik Mitter and Biswajit Manna

For Respondents/Defendant: B.R. Ghosal, Sanjay Bardhan and Himangshu Ghosh

Subject: Criminal

Catch Words

Mentioned IN

Acts/Rules/Orders:

Code of Criminal Procedure, 1973 (CrPC) - Section 439; Constitution Of India - Article 226, Constitution Of India - Article 53(1), Constitution Of India - Article 77(2); General Clauses Act 1897 - Section 3(8); Indian Evidence Act, 1872 - Section 114(e); Indian Penal Code 1860, (IPC) - Section 121; Indian Penal Code 1860, (IPC) - Section 121A; Indian Penal Code 1860, (IPC) - Section 122; Indian Penal Code 1860, (IPC) - Section 124A; National Investigation Agency Act 2008 - Section 6(5), National Investigation Agency Act 2008 - Section 8; Unlawful Activities Prevention Act, 1967 (central) - Section 17, Unlawful Activities Prevention Act, 1967 (central) - Section 18(B), Unlawful Activities Prevention Act, 1967 (central) - Section 18B, Unlawful Activities Prevention Act, 1967 (central) - Section 19, Unlawful Activities Prevention Act, 1967 (central) - Section 20, Unlawful Activities Prevention Act, 1967 (central) - Section 21, Unlawful Activities Prevention Act, 1967 (central) - Section 38, Unlawful Activities Prevention Act, 1967 (central) - Section 39, Unlawful Activities Prevention Act, 1967 (central) - Section 40, Unlawful Activities Prevention Act, 1967 (central) - Section 43, Unlawful Activities Prevention Act, 1967 (central) - Section 43A, Unlawful Activities Prevention Act, 1967 (central) - Section 43B, Unlawful Activities Prevention Act, 1967 (central) - Section 45, Unlawful Activities Prevention Act, 1967 (central) - Section 45(2), Unlawful Activities Prevention Act, 1967 (central) - Section 48

Cases Referred:

State of Uttaranchal and Anr. vs. Sunil Kumar Vaish and Ors. MANU/SC/0941/2011; Sethi Auto Service Station and Anr. vs. Delhi Development Authority and Ors. MANU/SC/8127/2008; Shanti Sports Club and Anr. vs. Union of India (UOI) and Ors. MANU/SC/1505/2009; Narayan Govind Gavate and Ors. vs. State of Maharashtra and Ors. MANU/SC/0015/1976; Samsher Singh vs. State of Punjab and Anr. MANU/SC/0073/1974; Izharul Haq Abdul Hamid Shaikh and Anr. vs. State of Gujarat MANU/SC/0374/2009; State of Uttaranchal vs. Rajesh Kumar Gupta MANU/SC/5034/2006; Rangku Dutta @ Ranjan Kumar Dutta vs. State of Assam MANU/SC/0651/2011; Redaul Hussain Khan vs. National Investigation Agency MANU/SC/1877/2009; Akula Bhoomaiah and another vs. The State of A.P., rep. by Public Prosecutor, High Court of A.P. and others MANU/AP/0506/2012; Saraswati Rai vs. Union of India (UOI) MANU/WB/0357/2011

Citing Reference:

Discussed

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## JUDGMENT

Nishita Mhatre, J.

1. Appeal No. CRA 431 of 2011 has been preferred by Kangujam Ravi Kumar and is directed against the judgment and order dated 6th July, 2011 passed by the Sessions Judge, Darjeeling in NIA case No. 6 of 2010. CRA No. 469 of 2011 has been preferred by Neera Tamang and Menjor Singh alias Sorokhybam Menjor Singh and is directed against the judgment and order dated 20th July, 2011 passed by the Sessions Judge, Darjeeling in the same NIA case. The appellants' prayer for bail has been rejected. Both these appeals are being decided together as they arise out of the same Matigara Police Station case No. 51 of 2010 dated 15th March, 2010 which has been converted to NIA case No. 6 of 2010. It is the prosecution's case that on 14th March, 2010, the Deputy Superintendent of Police, Siliguri received a written requisition from the Officer-in-Charge of Commando Imphal, East Manipur Police that one Ningthoujam Tomba alias Koirang alias Rajen, (hereinafter referred to as Tomba) a prominent leader of an extremist group operating in Manipur, was wanted in criminal cases. He was to pass through Siliguri along with his associates and that he was moving in the vicinity of the Matigara Police Station area. A vehicle was intercepted after obtaining prior information. The two persons in the vehicle, Tomba and Saraswati Rai were taken into custody. Several articles were seized from their possession including two mobile phones and some currency. On the basis of the statement of Tomba some other persons, namely, Sorokhaibam Memcha Devi and N. Rama Chanu were arrested. All the persons were identified by the Officer-in-Charge, Commando Imphal, East Manipur, as the members of the extremist group Kanglei Yaol Kunba Lup (hereinafter referred to as 'KYKL'). The FIR was registered for investigation being No. 51/2020 dated 14.3.2010 at Matigara Police Station under Sections 121/121A/122/124A of the



2. An order was issued by the Government of India, Ministry of Home Affairs (Internal Security-I Division) dated 8th April, 2010 signed by the Joint Secretary to the Government of India indicating that the Central Government, having regard to the gravity of the offences and other material in its possession, was of the opinion that the offences were scheduled offences under the National Investigation Agency Act, 2008 (hereinafter referred to as 'NIA Act') and offences connected to the scheduled offences under Section 8 of the NIA Act affecting the security of the State. Therefore, in exercise of the powers conferred under Section 6(5) read with Section 8 of the NIA Act, the Central Government suo motu directed the NIA to take up the investigation of the aforesaid case and such other offences which may be revealed during the investigation. The FIR was re-registered as NIA/New Delhi Crime No. 6/2010 dated 24.4.2010 against four named accused persons and other unknown persons.
3. During the course of investigation by the NIA, it was revealed that other offences had been committed by the accused under sections 17, 18(B), 19, 20, 21, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter called 'UAP Act') and therefore these sections were invoked.
4. According to the prosecution the involvement of the appellants came to light and they were also arraigned. The prosecution claims that all of them were arrested. However according to the appellant in C.R.A. 431 of 2011, Kangujam Ravi Kumar Singh, (hereinafter referred to as Ravi Kumar) he complied with the directions of the NIA team and met them on several occasions after which he surrendered before the court and was not required to be arrested.
5. An application for bail was preferred by the Ravi Kumar on 16th November, 2010 before the Sessions Judge, Darjeeling. However, that application was rejected as the case records had been transmitted to the High Court. He renewed his prayer for bail in terms of Section 439 of the Code of Criminal Procedure on 3rd March, 2011. The application was rejected by the Sessions Court on 6th July, 2011. The application for bail of Menjor Singh and Neera Tamang was rejected by the same

Court on 20th July 2011. Hence the present appeals.

6. Mr. Sekhar Basu, the learned Counsel, appearing for the appellants has raised multiple issues with regard to the maintainability of the prosecution itself and also on merits of the bail applications. His first submission was that the order of the Central Government issued under Section 6(5) of the NIA Act on 8th April, 2010, signed by the Joint Secretary to the Government of India, was not valid as it was not issued in the name of the President of India. At best, according to him, it could be termed as a mere communication of the opinion of the Central Government. He submitted that when an order is passed by the Central Government, it must be issued in the name of the President of India in view of Section 3(8) of the General Clauses Act, 1897. According to him any decision, notification, action or order of the Central Government must be expressed in the name of the President of India and authenticated under Article 77(2) of the Constitution of India. Mr. Basu submitted that any deviation from such a Constitutional mandate would vitiate all actions taken pursuant to that order. He has relied on the judgments of the Supreme Court in the case of State of Uttaranchal & Anr. v. Sunil Kumar Vaish & Ors., reported in MANU/SC/0941/2011 : 2011 (8) Supreme 56 : (AIR 2011 SC (Civ) 2425); Sethi Auto Service Station & another v. Delhi Development Authority & others, reported in MANU/SC/8127/2008 : (2009) 1 SCC 180 : (AIR 2009 SC 904), Shanti Sports



Club & another v. Union of India & others, reported in MANU/SC/1505/2009 : (2009) 15 SCC 705 : (AIR 2010 SC 433); Narayan Govind Gavate etc. v. State of Maharashtra & others, reported in MANU/SC/0015/1976 : AIR 1977 SC 183, Samsher Singh v. State of Punjab & another, reported in MANU/SC/0073/1974 : (1974) 2 SCC 831 : (AIR 1974 SC 2192) in support of this submission.

7. The next argument of Mr. Basu was that cognisance of offences which fall either under Chapters IV or VI of the UAP Act is mandatorily dependant on the sanction being granted in the manner prescribed under Section 45 of the UAP Act. Such sanction for prosecution, according to Mr. Basu, must be preceded by a recommendation, of an authority appointed by the Central Government, based on its

independent review of the evidence gathered in the course of the investigation. He submitted that the charge-sheet which has been submitted does not indicate that there has been compliance with Section 45(2) of UAP Act. The learned Counsel, therefore, submitted that it is vital that the prosecution places the report before this Court to ascertain whether the independent authority has acted in accordance with law, and whether such recommendation given by the authority is based on the evidence available.

8. The learned Counsel then submitted that there has been no compliance with Section 43 of the UAP Act which also renders the investigation untenable. He pointed out that the investigation was conducted by an officer who was not empowered in law to perform such duty. According to him, in view of Section 43A of the UAP Act, only an officer of the designated authority empowered by a general or special order of the Central Government may authorise his subordinate to arrest a person or conduct a search when he has reason to believe that an offence punishable under the UAP Act has been committed. The learned Counsel urged that since the UAP Act is a special act, enacted to effectively prevent certain unlawful activities including terrorist activities, it is necessary that every procedure under the said Act is strictly complied. He pointed out that in view of Section 48 of the UAP Act the provisions of the Act have an overriding effect over the provisions of the Cr.P.C. which may be inconsistent therewith, especially as applicable to arrest search and seizure.

9. Mr. Basu has relied on the judgment of the Supreme Court in the case of Izharul Haq Abdul Hamid Shaikh & another v. State of Gujarat, reported in MANU/SC/0374/2009 : (2009) 2 SCC (Cri) 653 : (2009 AIR SCW 2212) in support of his submission that sanction must be obtained in accordance with the provisions of the special act. He has further relied on the judgment in the case of State of Uttaranchal v. Rajesh Kumar Gupta, reported in MANU/SC/5034/2006 : (2007) 1 SCC (Cri) 356 : (2006 AIR SCW 5666) to fortify his submission that when the accused has been charged with a grave offence, it is all the more necessary to apply the provisions of law strictly. He has also relied on the judgment of Rangku Dutta alias Ranjan Kumar Dutta v. State of Assam, reported in MANU/SC/0651/2011 : (2011) 2 SCC (Cri) 964 : (AIR 2011 SC 2321) to submit that the provisions of both Section 6(5) of the NIA Act and Sections 43 and 45 of the UAP Act have been violated and these breaches of law cannot be cured.

10. Mr. B.R. Ghoshal, the learned Counsel for the NIA urged that this Court, while deciding an appeal against an order rejecting bail, cannot consider whether any orders on the basis of which action has been initiated are ultra vires the Constitution of India or whether they are bad in law. He submitted that the validity of the order dated 8th April, 2010 can be questioned only by filing a Writ Petition under Article 226 of the Constitution and not before the Appeal



Court. He then submitted that the impugned order has not been challenged on the basis of the submissions put forward on behalf of the appellant or on the questions of law raised by Mr. Basu. The respondent should not be taken by surprise by permitting the appellant to raise its issues at this juncture, urged the learned Counsel. He pointed out that under Article 53(1) of the Constitution of India the executive power of the union can be exercised either by the President of India directly or through an officer subordinate to him who has been empowered to do so. He submitted that the Joint Secretary is empowered to issue orders. He urged that in view of the presumption under Section 114(e) of the Indian Evidence Act the orders passed by the

Central Government must be presumed to be passed regularly. He then submitted that the orders sanctioning the appellants' prosecution has been issued in the name of the President of India on 7th September, 2010. According to him there is no need to place on record the report which persuaded the independent authority to grant a sanction to prosecute the appellant under the UAP Act. He further submitted that the judgments relied on behalf of the petitioner are not relevant at this stage as we are concerned only with a bail application.

11. Reliance has been placed by Mr. Ghoshal on the judgments of the Supreme Court in the case of Redaul Hussain Khan v. National Investigation Agency reported in MANU/SC/1877/2009 : 2010 Criminal Law Journal 1413 : (AIR 2010 SC (Supp) 480), two judgments of the Kerala High Court in the case of 2011 Criminal Law Journal 1729, 2011 Criminal Law Journal 1938 and the judgment of the Andhra Pradesh High Court, MANU/AP/0506/2012 : 2013 Criminal Law Journal 1198.

12. The issue as to whether the prosecution has been sanctioned in accordance with the provisions of Section 6(5) read with Section 8 of the NIA Act need not be considered by us at this stage for more than one reason. This issue which goes to the root of the matter, according to Mr. Basu, was not raised by the accused Saraswati Rai who has been granted bail by this Court in Saraswati Rai v. Union of India, reported in MANU/WB/0357/2011 : 2011 (4) CHN (Cal) 324 : (2011 Cri LJ 3020 (Cal)). Further, when an application for bail was moved on behalf of Neera Tamang, one of the appellants in CRA 431 of 2011, no such ground was raised. The issue was not raised before the Sessions Court when the bail applications were decided. Even in the present appeal, no ground has been raised in the memo of appeal relating to this issue. It is true that a question of law can be raised at any point of time. We do not subscribe to the contention of Mr. Ghoshal that as we are considering whether bail should be granted to the appellants, we cannot consider the legality and validity of the orders issued under the NIA Act or under the UAP Act. It will have to be proved by the prosecution on the basis of evidence that the initiation of the prosecution was in accordance with law and within the ambit of the provisions of Section 6(5) of the NIA Act. Whether the Joint Secretary is empowered to issue such an order is a question of fact. In any event the action against the appellants has commenced in view of the order dated 7th September, 2010 issued by the Government of India, Ministry of Home Affairs in the name of the President of India. It is this order under which sanction had been accorded by the Central Government for prosecuting 7 accused including the appellants here under Sections 121/121A/122/124A of the I.P.C. and Sections 17/18B/19/20/21/38/39 and 40 of the UAP Act in case No. 6 of 2010 of the NIA.

13. The argument of Mr. Basu, that in view of Section 45(2) of the UAP Act it is mandatory for the Respondents to place before the Court the report of the authority constituted, disclosing its independent review of the evidence garnered in course of investigation, is not tenable at this stage. In our opinion, this satisfaction of the authority or report recommending sanction for prosecution is not necessary to be placed before us when we are deciding a bail



application.

14. We will now advert to the statements of the witnesses recorded to ascertain as to whether the appellants deserve to be enlarged on bail. It must be stated here that the charge-sheet has been submitted on 8th September, 2010 in which Menjor Singh is shown as accused No. 5, Neera Tamang as accused No. 6 and Ravi Kumar as accused No. 7. Evidence regarding the involvement of the 3 appellants came to light during the course of investigation. The case of the prosecution is that Ningthoujam Tomba (accused No. 1) with the help of his associates established an advanced operational base and a safe house to run his terrorist activities from a

strategically located place in Kurseong. He controlled the finance of the unlawful association, KYKL. It is further alleged that Ningthoujam Tomba secured a house on rent in Kurseong with the aid of Menjor Singh and Neera Tamang in the year 2005 to establish a safe haven.

According to the prosecution, the seven accused entered into a criminal conspiracy to disturb peace and tranquillity, to wage war against the State in order to overthrow the Government by using criminal force and in furtherance of the conspiracy they were procuring arms/ammunitions, collecting funds for terrorist acts, recruiting persons for commission of terrorist acts, voluntarily harbouring or concealing persons knowing that such persons are terrorists and members of terrorist organisations, holding and acquiring property for the commission of terrorist acts. The allegation against Kangujam Rabi Kumar Singh in the charge-sheet is that he purchased a plot of land in his name from the funds given to him by Ningthoujam Tomba for the future expansion of KYKL base camp in Jalpaiguri. It is further alleged that Kangujam Rabi Kumar Singh not only assisted Ningthoujam Tomba by financial support but also by physical support by allowing his name to be registered as owner of the plot for establishing a safe house and a base camp for KYKL in West Bengal.

15. We have perused the statements on record. We find, prima facie, that the allegations contained in the charge-sheet are supported by the contents of the statements recorded. There is material on record to indicate that the deed writer was informed to draw up a deed showing that Kangujam Rabi Kumar Singh as the purchaser of the plot of land. The statement of the owner of the plot of land has been recorded. The statements of the brokers who negotiated the transaction between the owner and Ningthoujam Tomba have also been recorded. Besides this, the statement of the deed writer has been recorded. Prima facie, the involvement of Kangujam Rabi Kumar Singh cannot be ruled out at this stage, and, therefore, we see no reason to enlarge him on bail.

16. As regards the appeal of Neera Tamang, this is her second appeal for bail. She had filed an appeal being CRA No. 678 of 2010 against the rejection of her prayer for bail by the Sessions Court. That appeal was rejected on 28th March, 2011. We do not see any reason to differ from that order as there is no change in the circumstances after the rejection of the earlier appeal.

17. Adverting now to the allegations against Sorokhybam Menjor Singh, the charge-sheet mentions that in pursuance of the criminal conspiracy he deposited a cash of Rs. 59,98,000/- (Rupees fifty nine lacs ninety eight thousand only) between 10th November, 2007 and 1st February, 2010 in Urban Co-operative Bank, Imphal and sent the money by mail transfer into two accounts of Ningthoujam Tomba maintained with ICICI Bank, Guwahati. This amount was subsequently withdrawn by Ningthoujam Tomba through the ATM. The allegation

against Sorokhybam Menjor Singh is that he was the main conduit through whom Ningthoujam Tomba used to transfer funds from Manipur to finance his terrorist activities. The material on record includes the statements of bank employees and documents which prima facie indicate the transfer of huge amounts into Ningthoujam Tomba's account on the basis of deposits made in the Urban Co-operative Bank. Therefore, in our opinion the complicity of the appellants is prima facie established on the basis of the material made available in the case diary. A supplementary charge-sheet has also been submitted on 28th July, 2011.

18. It has been argued by Mr. Basu that the investigation has not proceeded in accordance with law as the provisions of the UAP Act mandate that no police officer below the rank of Assistant Commissioner of Police can investigate any offence punishable under Chapters IV and VI of the Act. He points out that all the statements have been recorded by an Inspector of

Police and this amounts to a breach of provisions of Section 43B of the Act. In support of his submission, Mr. Basu, has relied on the judgments of Izharul Haq Abdul Hamid Shaikh & another (MANU/SC/0374/2009 : 2009 AIR SCW 2212) (supra) and State of Uttaranchal v. Rajesh Kumar Gupta (MANU/SC/5034/2006 : 2006 AIR SCW 5666) (supra). Prima facie, in our opinion, recording of the statements by a police officer below the rank of Assistant Commissioner of Police would not be barred. The investigation has been conducted under the command of the Assistant Commissioner of Police/Superintendent of Police, NIA, New Delhi. Therefore, in our opinion, this submission is unacceptable.

19. It has also been argued by Mr. Basu that if the appellants are enlarged on bail there is no possibility of them absconding and they would attend the trial assiduously.

20. We have noted that Kangujam Rabi Kumar Singh was absconding and a warrant of arrest was issued in the name of Kangujam Rabi Kumar Singh. He was arrested on 31st October, 2010 one month after the charge-sheet had been submitted. Whether Kangujam Rabi Kumar Singh surrendered, as submitted by his Counsel, or he was arrested after the warrant was issued against him is a matter of record. We do not think it appropriate to enlarge the appellants on bail, considering the gravity of the offences allegedly committed by the appellants. The material on record, prima facie, shows their complicity and there are reasonable grounds for believing that the accusations against them are true. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.