

R.K. KRISHNA KUMAR  
v.  
STATE OF ASSAM AND ORS.

DECEMBER 3, 1997

[M.K. MUKHERJEE AND K.T. THOMAS, JJ.]

*Criminal Law :*

*Criminal Procedure Code, 1973 : Section 438.*

*Anticipatory Bail—Under the Unlawful Activities (Prevention) Act and Penal Code—Grant of—Officers of a Company met some leaders of an unlawful association, negotiated with them in connection with their various demands including ransom demands—Case Diary revealed that the Company had funded the said unlawful association and the Officers had a role to play in such funding—Held : In such circumstances, a prima facie case under S.10 made out against the Officers, in that, they assisted the operations of the said unlawful association but not under Section 13 thereof or under the Penal Code—Hence, question of granting anticipatory bail does not arise since offence under S.10 is bailable—Unlawful Activities (Prevention) Act, 1967, Ss. 10 and 13—Penal Code, 1860, Ss. 120-B, 121, 121-A and 122.*

*Section 438—Anticipatory Bail—Grant of—Held: Not applicable if the offence is bailable.*

The appellants were Officers of a Company and they met some leaders of an unlawful association, negotiated with them in connection with their demands including ransom demands and payment of hospital and hotel bills. The case diary of the investigation proceedings had revealed that the Company had funded the said unlawful association and that the appellants had a role to play in such funding. On the basis of these facts the police registered a case against the appellants under Section 120-B, 121, 121-A and 122 of the Penal Code, 1860 and Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967.

The appellants apprehended that they might be arrested in connection with the above case and, therefore, they filed applications for anticipatory bail before the Bombay High Court under Section 438 of the Criminal Procedure Code, 1973. The applications were allowed by the Bombay High Court. Being aggrieved the respondent-State preferred an

A appeal before this Court. This Court set aside the order of the Bombay High Court as it was passed *ex-parte* and transferred the anticipatory bail applications to the Gauhati High Court. However, the Gauhati High Court dismissed these applications. Hence this appeal.

Disposing of the appeal, this Court

B HELD : 1. When the materials collected during investigation are judged in the light of the provisions of the Penal Code, 1860 and Unlawful Activities (Prevention) Act, 1967 it is apparent that they make out a *prima facie* case under Section 10 of the Act against the appellants, in that, they have assisted the operations of an unlawful association through contributions and also in other ways. However, when those material allegations levelled against the appellants are considered vis-a-vis the 'unlawful activities' envisaged under the Act it cannot be said that they are liable for an offence under Section 13 of the Act, much less under the offences under the Penal Code. Resultantly, the question of granting anticipatory bail to the appellants under Section 438 of the Criminal Procedure Code, 1973 cannot and does not arise, for an offence under Section 10 of the Act is bailable; and a direction under the former can be issued only in respect of a non-bailable offence. [159-F-H; 160-A]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1157 of 1997 etc. etc.

From the Judgment and Order dated 10.11.97 of the Assam High Court in S.C.A. No. 60 of 1997.

F Soli J. Sorabjee, Shanti Bhushan, Arun Jaitley, Mahesh Jethmalani, Arvind Kumar, Upamanyu Hazarika, R.N. Karanjawala, Ms. Nandini Gore, Ms. M. Karanjawala, Advs. with them for the Appellants.

K.T.S. Tuli, Sunil Jain, Vijay Hansaria, Vikas Pawha, for M/s Jain Hansaria & Co., for the Respondents.

G The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. Leave granted in all these petitions. Heard the learned counsel for the parties.

H 2. On a First Information Report (F.I.R.) lodged by the Superintendent of Police, Special Operation Unit (SOU), Assam, a case under

Sections 120-B, 121, 121-A and 122 of the Indian Penal Code and 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 ('Act' for short) was registered by the SOU Police Station. The F.I.R. was based on reports collected from various parts of the State of Assam regarding secessionist activities of some militant organisations including United Liberation Front of Assam (ULFA). In connection with that case three ULFA activists were arrested by the police at Mumbai Airport on August 23, 1997. It is alleged that their interrogation revealed that their hotel bills and the medical bill of one of them, namely Mrs. Pranati Deba, who was admitted in a hospital for child birth, were borne by TATA Tea Company Ltd. ('Company' for short) under instructions from, amongst others, Shamsher Singh Dogra, the General Manager of the Company. A few days later, a report appeared in various newspapers circulating throughout the country of a Press Conference held by the Director General of Police, Assam to the effect that the Company had not only paid the personal bills of top ULFA militants but had also paid money, which ran to several lakhs, to ULFA on various occasions. On perusal of the report Shri R.K. Krishna Kumar, Shri S. Kidwai and Shri K. Sridhar, the Managing Director, Executive Director and a Consultant of the Company respectively, (the three appellants before us) apprehended that they might be arrested in connection with the above case. They then filed separate applications before the Bombay High Court under Section 438 of the Code of Criminal Procedure praying that they might be directed to be released forthwith in the event of their arrest at the instance of the Director General of Police of Assam in connection with the above case, or any other case that may be filed concerning the allegations of funding of ULFA militants. Their prayer was allowed by the Bombay High Court; and aggrieved thereby the State of Assam preferred appeals in this Court after obtaining special leave. This Court set aside the order of the Bombay High Court as it was passed *ex parte* and transferred the anticipatory bail applications filed by the appellants to the Gauhati High Court for disposal by a Division Bench. This Court, however, permitted the appellants to continue on the anticipatory bail granted by the Bombay High Court till November 7, 1997. Pursuant to the said direction the applications for anticipatory bail were heard on November 7, 1997 by a Division Bench of the Gauhati High Court and the prayer of the appellants was rejected. Hence these appeals at their instance.

3. Briefly stated, the case of the appellants, as can be culled out from the affidavits (and the annexures thereto) filed before this Court, is as

A under :

(a) The Company owns 21 tea gardens in the State of Assam and has 21,000 employees on its roll. The company have had been the targets of extortion, killing and kidnapping by the militant organisations, including  
B ULFA. In the past several attempts had been made to intimidate the employees of the Company and make ransom demands on it. In the year 1993, Mr. B. Bordoloi, a Senior Executive of the Company stationed at Gauhati, was captured by one of those militant organisations and kept in  
C detention for a period of eleven months. Though the Company was pressurized by the public, and the family of Mr. Bordoloi in particular, to pay the ransom demanded by the militant organisation for securing his release it refused to do so. Later on ULFA repeatedly made several demands to the Company in the forms of a tax for each of the tea estates owned by it, walkie talkie sets etc. On each of such occasions the Company brought the demands to the notice of the appropriate authorities of the  
D Central Government either personally through their officers or by letters and the Central Government had put the Company in touch with its Intelligence Bureau.

(b) According to the Company it was the Central Intelligence Agency  
E which advised it to continue negotiations with the militants but not to pay ransom/protection money to them. Though the Company insisted that it would not make any payment of unlawful money to the militants it formulated several social and community welfare schemes for the people of Assam. The Company asserts that all negotiations with militant  
F organisations took place with the knowledge and guidance of Central Government agencies.

(c) While admitting that the Company negotiated with the ULFA,  
G that some of its officers met some leaders of that organisation in Bangkok in connection with their demands, and that it paid the hospital bill and hotel bills of their members in Mumbai it has submitted that to protect the larger interest of the employees of the Company and its tea gardens, it was compelled to yield to some of the demands of the organisation. The Company, however, categorically denied to have paid any ransom to the  
H ULFA or any other militant organisation.

4. On the basis of the above facts and circumstances Mr. Shanti Bhushan who appeared for the Company, contended that it could not be said that any officer of the Company had committed any offence, far less the offences alleged against them. A

5. Mr. Tulsi appearing for the respondent-State of Assam, however, refuted the contentions of the Company and submitted that investigation has revealed the involvement of a number of officers of the Company, including the appellants, in the illegal and unlawful activities of ULFA and other militant organisations and, therefore, the appellants should not be granted anticipatory bail. Mr. Tulsi further submitted that denial of an opportunity to the Investigating Agency to interrogate the appellants in custody, confronting them with the information available with the Investigating Agency, obtaining their version pursuant to the leads gained through interrogation by conducting raids and searches of the hide-outs of the militants has put the Investigating Agency at serious handicap in being able to discover the extent and manner of the involvement of the employees of the Tata Tea Company in 'unlawful activities' within the meaning of the Act. To bring home his contentions Mr. Tulsi handed over to us the case diary prepared and maintained under Section 172 Cr. P.C. B C D

6. On a careful persual of the case diary we find that the investigation has revealed that some of the officers of the Company did meet top leaders of ULFA within and outside India in which negotiations were held between them over the various demands made by the latter and that the Company has expressed its willingness to accede to some of those demands. The investigation has further revealed that the Company has funded the organisation and the appellants had a role to play in it. E F

7. On the basis of the above materials collected during investigation, it is now to be seen whether the appellants have committed the offences for which they are sought to be made liable. Coming first to the offences under the Indian Penal Code Section 120-B relates to criminal conspiracy to commit any offence and Sections 121, 121-A and 122 specifically relate to offences against the State. While Section 121 provides for punishment of those engaged in waging war against the Government of India, the other two Sections relate to conspiracy and preparation to commit such offence by collecting arms etc., respectively. G H

A 8. To ascertain the nature of offences envisaged under Sections 10 and 13 of the Act, it would be necessary to first refer to the definition of 'unlawful activity' in Section 2 (f) of the Act which reads as under :

B "unlawful activity', in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), -

• (i) which is intended, or supports any claim, to bring about, or any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;

D (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;"

'Unlawful association' has been defined in Section 2(g) to mean any association :

E "(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

F (ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code, 1860 (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity :

G Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu & Kashmir."

H 9. Section 10 provides that whoever is and continues to be a member of an association declared unlawful by a notification issued under Section 3 which has become effective under sub-section (3) of that section, or takes part in meetings of any such unlawful association, or contributes to, or receives or solicits any contribution for the purpose of any such unlawful

association or in any way assists the operation of any such unlawful association shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine. A

10. Section 13 speaks of punishment for 'unlawful activities' and it reads as follows : B

"(1) Whoever -

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, C

any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under Section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both. D

(4) Nothing in this section shall apply to any treaty, agreement or convention entered between the Government of India and the Government of any other country or to any negotiations thereof carried on by any person authorised in this behalf by the Government of India." E

11. When the materials collected during investigation are judged in the light of the above provisions of the Indian Penal Code and the Act, it is apparent that they make out a *prima facie* case under Section 10 of the Act against the appellants, in that, they have assisted the operations of ULFA (which has been declared as an unlawful association under Section 3 of the Act) through contributions and also in other ways. However, when those material allegations levelled against the appellants are considered vis-a-vis the 'unlawful activities' envisaged under the Act it cannot be said that they are liable for an offence under Section 13 of the Act, much less under the aforesaid offences under the Indian Penal Code. Resultantly, the question of granting anticipatory bail to the appellants under Section 438 of the Code of Criminal Procedure cannot and does not arise for an F G H

A offence under Section 10 of the Act is bailable; and a direction under the former can be issued only in respect of a non-bailable offence. Viewed in that context the merits of the appellants' contention that they have not committed any offence alleged against them need not be gone into.

10. With the above observations we dispose of these appeals.

B

V.S.S.

Appeals disposed of.