

A ANUSUYABEN SADASHIV JADAV AND ANR.

v.

UNION OF INDIA AND ORS.
(Crl. M.P. No. 5643-5647 of 2007)

DECEMBER 1, 2008

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**[K.G. BALAKRISHNAN, CJ., R.V. RAVEENDRAN AND
DALVEER BHANDARI, JJ.]**

BAIL:

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Applications for bail by accused of POTA and other offences – HELD: In the light of judgment of Supreme Court upholding constitutionality of ss.2(3) and (5) of Prevention of Terrorism (Repeal) Act and the deemed withdrawal of cases under POTA, bail applications filed by accused have to be considered afresh – In all these cases wherever Review Committee has recorded its opinion that there is no prima facie case for proceeding against accused, they are not to be tried under provisions of POTA – However, these accused have also been charged with several non-POTA offences and these offences will have to be tried by regular Sessions Judges (or CBI Court) – By virtue of Section 33 of the POTA, the Sessions Judge has to proceed with these cases as if he had taken cognizance of these offences – The POTA Special Judges before whom cases of applicants are pending are directed to send all those cases to respective Sessions Judge within a period of one month of receipt of a copy of this order – This is subject to the order, if any, that may be passed by any competent court against the opinion of Central POTA Review Committee – All these petitions/applications for bail/impleadment are permitted to be withdrawn with liberty to move for bail before the Court of Session concerned after the records are received on transfer – In the event of filing such applications, Sessions Judge shall consider the same on merits untrammelled by the observations, if any, made by

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superior courts in any bail application filed by the respective petitioners – POTA Case No.12 against Crime NO.6 of 2003 in the Crime Branch, Ahmedabad city and POTA Case No.10 against Crime No.272/03 in Ellisbridge Police Station, C.B.I. Court, on transfer are to be tried by the Sessions Judge having jurisdiction – It has been stated that these petitioners are under-trial prisoners since April, 2003 – The respective Sessions Judge will consider this fact and dispose of the matters as expeditiously as possible – Prevention of Terrorism Act, 2002 – s.33 – Prevention of Terrorism (Repeal) Act, 2004 – ss. 2(3) and (5) – Transfer of cases pending before Special Courts under POTA to regular Court of Session.

CRIMINAL APPELLATE JURISDICTION : CrI. M.P. Nos. 5643-5647 of 2007.

IN

Criminal Appeal Nos. 1651-1652 of 2008.

WITH

CrI. M.P. No. 4506/2007 @ CrI. A. No.1113/2005, 5639-5642, 5648-49/2007, 5981-5986/2007, 8315/2007 and 15724-15725/2008 IN CrI.A. Nos.1651-1652/2008.

Sheela Goel for the Petitioners.

Sushil Kumar, Sandhya Goswami (for B.K. Prasad) Sushma Suri, P. Parmeswaran, Hemantika Wahi, Pinky Behra, K. Enatoli Sema, Somnath, Kamini Jaiswal, Nitya Ramakrishnan, Trideep Pais (for M/S. K.J. John & Co.) for the Respondents.

The following Order of the Court was delivered :

ORDER

CRL.M.P.NOS.4506/2007 @ CRL.A.No.1113/2005, CRL. M.P. NOS.5639, 5640, 5641 AND 5642 OF 2007 @ CRL.A.NOS.1651-1652/2008, which are connected cases, are

A also taken on board, at the request of learned counsel.

B 2. These are bail applications/applications for
impleadment by the accused petitioners filed in POTA/criminal
cases pending on the files of Special POTA Judge, Sabarmati,
Ahmedabad and other courts in regard to POTA cases
registered with Godhra police station, Crime Branch,
Ahmedabad City and Ellisbridge Police Station, Ahmedabad.
In some of these cases, bail applications were rejected by the
Special Judge and in some cases the same were rejected by
the High Court and in some other cases by this Court.

C 3. Subsequently the Prevention of Terrorism (Repeal) Act,
2004 (for short 'the Repealing Act') was enacted. Certain
provisions of the said Act were challenged. This Court, by
judgment dated 21.10.2008, upheld the validity of Section 2(3)
D and (5) of the Repealing Act and also passed the following
directions :

- E 1. "the judgments under challenge to the extent they
declare Section 2(3) and (5) of the Repealing Act
are not unconstitutional, are upheld;
- F 2. the judgments under appeal are set aside to the
extent they hold that in spite of deemed withdrawal
of the cases, the procedure under Section 321 of
the Code has to be followed for withdrawal;
- G 3. the appeals filed by POTA accused are allowed in
part accordingly. The appeals by the relatives of
victims are disposed of reserving liberty to
challenge the opinions of the Review Committee,
wherever they are aggrieved;
- H 4. We do not express any opinion on the merits of the
cases of the POTA accused or in regard to the
opinions expressed by the Review Committee."

In the light of the said judgment, upholding the deemed
withdrawal of cases under POTA, the bail applications filed by

the accused have to be considered afresh. In all these cases wherever the Review Committee has recorded its opinion that there is no prima facie case for proceeding against the accused, the accused are not to be tried under the provisions of the POTA. However, these accused have also been charged in regard to several non-POTA offences and these offences will have to be tried by regular Sessions Judges (or CBI Court). By virtue of Section 33 of the POTA, the Sessions Judge has to proceed with these cases as if he had taken cognizance of these offences.

4. We, therefore, direct the POTA Special Judge, Sabarmati, Ahmedabad or other courts where the cases of applicants are pending to send all those cases to the respective Sessions Judge within a period of one month of receipt of a copy of this order. This is subject to the order, if any, that may be passed by any competent court against the opinion of Central POTA Review Committee.

5. All these petitions/applications for bail/impleadment are permitted to be withdrawn with liberty to move for bail before the concerned Sessions Court after the records are received on transfer. In the event of filing such applications, the Sessions Judge shall consider the same on merits untrammelled by the observations, if any, made by the superior courts in any bail application filed by these respective petitioners.

6. POTA Case No.12 against Crime NO.6 of 2003 in the Crime Branch, Ahmedabad city and POTA Case No.10 against Crime No.272/03 in Ellisbridge Police Station, C.B.I. Court, on transfer are to be tried by the Sessions Judge having jurisdiction.

7. Learned counsel for the petitioners submit that these petitioners are under-trial prisoners since April, 2003. The respective Sessions Judge will consider this fact and dispose of the matters as expeditiously as possible.

R.P.

Matters disposed of.