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Crl.A.No.390 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2024

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE V.SIVAGNANAM

Crl.A.No.390 of 2023

Bava Bahrudeen

.. Appellant

Vs

Union of India
Deputy Superintendent of Police,
National Investigation Agency,
Chennai. (Rc.08/2021/NIA/DLI)

.. Respondents

Prayer: Appeal filed under Section 21(4) of the National Investigation Agency Act, 2008, to set aside the order passed in Crl.MP.302/2022 dated 10.02.2023 in Spl.SC.26/2022 on the file of the Honble Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial of Bomb Blast Cases Chennai at Poonamallee Chennai as illegal.

For the Appellant

: Mr.T.Mohan
Senior Counsel
for Mr.I.Abdul Basith



Crl.A.No.390 of 2023

For the Respondent : Mr.R.Karthikeyan
Spl. Public Prosecutor
Assisted by
Mr.G.Siddi Ramulu
Sr.P.P. for NIA cases

* * * * *

JUDGMENT

(Judgment of the Court was made by S.M.SUBRAMANIAM, J.)

Under assail is the judgment dated 10.02.2023 passed in Crl.M.P.No. 302 of 2022 in Spl.C.C.No.26 of 2022 (C.C.No.2 of 2021) on the file of Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee, Chennai.

2. Mr.Bava Bahrudeen @ Mannai Bava / A-2 is the petitioner before this Court. Since discharge petition filed under Section 227 Cr.P.C. came to be dismissed, the present criminal appeal has been instituted.



Crl.A.No.390 of 2023

WEB COPY

3. The learned senior counsel, Mr.T.Mohan, would mainly contend that there is no material available on record to implicate the petitioner with reference to the provisions of the Unlawful Activities (Prevention) Act, 1967. Section 2(o) defines “unlawful activities” and mere preaching of Islam religion would not fall under the definition of “unlawful activities” and therefore, the present case needs to be considered.

4. With reference to the judgment impugned, it is contended that the trial Court has not considered the nature of involvement of the petitioner and its veracity so as to implicate him in a case registered by National Investigation Agency under the Unlawful Activities (Prevention) Act. Non-application of mind with reference to the facts led to rejection of discharge petition.

5. The learned senior counsel solicit our attention with reference to the findings made by the trial Court and articulated by stating that the participation/involvement/nature of conversations as recorded in the charge-



Crl.A.No.390 of 2023

WEB COPY

sheet are not even considered by the trial Court in proper perspective and thus, the discharge petition needs to be considered. The observations made in the bail order passed by the High Court in Crl.A.No.487 of 2022 dated 15.07.2022 is also relied upon.

6. Mr.R.Karthikeyan, learned Special Public Prosecutor appearing on behalf of the National Investigation Agency, would strenuously oppose by stating that allegations in the charge-sheet along with the statements would be sufficient to implicate the petitioner in the criminal case. Mr.Karthikeyan, with all fairness, made a statement that certain observations which are all relevant ought to have been considered by the trial Court, however, the same would not constitute a ground for discharging the accused from a criminal case.

7. In view of the above submissions, we have carefully gone through the charge-sheet and the statements. The charge-sheet filed under Section 173 Cr.P.C. contains involvement and allegations. As far as the petitioner/



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A-2 is concerned, the relevant paragraphs are extracted hereunder:

"17.7. Emergency disclosure Request was sent to Facebook Inc, 1601Ban Willow Road, Menlo Park, CA 94025, No.08/2021/NIA-DLI/055 dated 22.06.2021 for Facebook profile IDs - United States vide RC MannaiBava and mannaibavaHT and reply received from Facebook, in that it was revealed that mobilr number 9095959275 used by accused Bava Bahrudeen @ Mannai Bava (A-2) was verified with the above said Facebook account.

17.8 For the purpose of unearthing the entire gang which was working for the extremist ideology to establish Islamic State Khilafah, the mobile numbers used by Bava Bahrudeen @ Mannai Bava (A-2) and Ziyavudeen Baqavi (A-3) were put on legal interception after obtaining prior approval from Joint Secretary (CIS), Ministry of Home Affairs, Government of India.

17.9 During intercepts, it was revealed that Bava Bahrudeen @ Mannai Bava (A-2) was discussing about the promise he had made regarding establishing study circles/cells for conducting closed door Bayans in Salem, Erode, Tirupur, Coimbatore districts of Tamil Nadu and also in Kerala. In another call, the accused Bava Bahrudeen @ Mannai Bava (A-2) tells one Mohamme Umar that the accused person Mohamed Iqbal (A-1) was arrested by Police for sharing his (A-2's) post. Further in another intercepted call, the accused tells one Mujibur Rahaman that he has forwarded the books of HuT and Zoom VC links for HuT study circles.

17.10. Protected witness "A" was identified based on the intercepted Call and CDR analysis of the mobile number 9095959275 used by accused Bava Bahrudeen @ Mannai Bava (A-2) and in his statement, Protected witness "A" has revealed that he knew accused Bava Bahrudeen @ Mannai



WEB COPY



Crl.A.No.390 of 2023

Bava (A-2) and he attended the Bayan classes conducted by A-2. Initially, Mannai Bava (A-2) had preached about the Islamic religious principles like Eemaan, Prayer, Aqueeda, etc. and later A-2 started preaching about the Islamic State and Khilafah and emphasized that Hizb-ut-Tahrir is the only organization which is working for establishment of the Islamic State of Khilafah. Further A-2 had explained the method which is being adopted by HuT to establish the Islamic State. Protected witness "A" also accepted that A-2 instructed him to scout for places in Salem, Tiruppur, Coimbatore, Ooty in Tamil Nadu and also places in Kerala.

17.11. The participants of the secret Bayans conducted by A-2 at Erode district of Tamil Nadu were identified as Sirajudeen, Sharfudeen and Muhammed Isack. They were examined and in their statements, they stated about the preaching done by A-2 in the Bayan and about the meetings they attended in the house of A-2 where Ziyavudeen Bhaqvi (A-3) conducted Bayans in which A-3 had preached about the way Islamic State Khilafa ruled in the past and how it was destroyed and how Muslims were being attacked by disbelievers over the world including Kashmir and other parts of India. Thereafter, Ziaudeen Baqvi preached about Khilafah and he insisted that it is a prime duty of every Muslim to work for re-establishing the Islamic State of Khilafah and Allah will punish those Muslims who did not work for establishing Khilafah. Further he added that some of the Muslim countries are being approached by Hizb-ut-Tahrir for Nusrat i.e., Military help to liberate Kashmir from India. Further, he said that when HuT will succeed in re-establishing the Islamic State of Khilafah, then India will be once again ruled by Islam.

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17.14. A search was conducted in the residence of Bava



WEB COPY



Crl.A.No.390 of 2023

Bahrudeen @ Mannai Bava (A-2) where 3 Mobile phones, many incriminating documents that advocate the establishment of Islamic State Khilafah such as literatures of Hizb-ut-Tahrir, documents which incite Muslim community to work against the Government established by law in India, and handwritten documents allegedly written by Abdul Kader @ Abukka of Saliangalam, Thanjavur District, the contents of which equate American wars with Iraw, Iran, Afghan, Pakistan and Kashmir, etc. to genocides. Further the handwritten document goes on to say that the Khilafah is inevitable and is going to arrive soon in the word.

17.15 Bava Bahrudeen @ Mannai Bava (A-2) was arrested on 16.09.2021 and during custodial interrogation, pointing out proceedings and social media extractions were done. In the pointing out proceedings, A-2 pointed out a house owned by him at Mansur Ali Thaikal, Thanjavur where Halakas of Hizb-ut-Tahrir were conducted by himself and Ziyavudeen Baqavi (A-3). Further, A-2 also named the participants of the said Halakas conducted in that place. In the same place, books of HuT, a petition copy dated 14.03.2019 of Mannai Bava seeking permission from SP, Thanjavur to conduct indoor meeting on Khilafah at Thanjavur and a pamphlet consisting 5 sheets title 'Khilafah and First World War' were recovered.

17.16. In the Facebook data extracted based on the disclosure of A-2 on 17.09.2021, incriminating posts, chats and contacts were recovered. To cite a few, on 16.08.2021, A-2 in his post appeals to the Mujahideens and Talibans to unite Afghanistan with Pakistan and Middle Eastern countries into one Khilafah under the banner of one flat. Then the post goes on to say that the millions of talented and armed military personnel must help to liberate Palestine and occupied Kashmir, where millions of Muslim Umma are



WEB COPY



Crl.A.No.390 of 2023

suffering. In another post on 03.09.2021, A-2 had commented that Talibans have pegged their currency to Dollar which is against the Sharia law and so Talibans have implemented Sharia law in Afghanistan only partially. Only in Khilafa, Sharia law can be implemented in letter and spirit.

17.17. In a chat/conversation with one Fathima Fazia Khan, they discuss about Islamic rule and Jihad. The other person says that S/he is from Kashmir and now around 45 people are in Dubai and s/he along with them, is going to avenge the Indian Government (for its cruelties in Kashmir). S/he further adds that some plans are going on. A-2 goes on to say that they pray for liberation of Kashmir and Palestine and that he is doing Dawa to reestablish Khilafah in the Muslim world.

17.18. In a chat with another Facebook user (account deleted) on 16.08.2015, A-2 addresses the other user as Amir and he claims to be from Tamil Nadu area of Wilayah/province of Hind. A-2 discloses about his efforts to spread the ideology of HuT in Tamil Nadu and he would continue to work for HuT till his death.

...

17.20. A few B-parties of Facebook chats with whom A-2 had discussed about the establishment of Islamic State Khilafah, getting Military assistance for establishing the Islamic State Khilafah and Ghazwatul Hind or Ghazwa-e-Hind were identified and their statements were recorded.

17.21. Sadhaam Ali Rahamathullah SM and Ilmutheen were identified and examined from the contacts stored prefixing "H" in the contact list of accused Bava Bahrudeen @ Mannai Bava (A-2), in their statements they over revealed that they received forwarded messages of A-2 in their WhatsApp with regard to ideology of Hizb-ut-Tahrir such as re-establishment of Islamic State of Khilafah, liberating the Kashmir, etc. ns Hoodsos.



WEB COPY



Crl.A.No.390 of 2023

17.22. *The mirror images of the digital devices seized from A-2 were received from C-DAC, Thiruvananthapuram and scrutinized. In the mirror image, the structure/hierarchy of Hizb-ut-Tahrir, an audio in English that talks about the victory of Taliban in Afghanistan and the same may be replicated in Pakistan to win over the US and the person (who talks! says he is from Pakistan and is working on a common objective, and a swearing-in statement to be done before joining Hizb-ut-Tahrir were found. ... "*

8. The Special Court passed an order in C.M.P.No.120 of 2022 dated 24.03.2022 wherein L.Ws.4, 8, 9 and 10 are being declared as protected witnesses. One of the protected witnesses has stated as follows:-

"..Once we all went to Mannai Bava's house at Thanjavur, where he introduced one Ziaudeen Baqvi and they showed videos in big screen that how the Khilafa ruled and how it was destroyed, and how Muslims are being attacked by disbelievers over the world including Kashmir and other parts of India. Thereafter Ziaudeen Baqvi preached about Khilafah and he insisted that it is a prime duty of every Muslim to work for re-establishing the Islamic State of Khilafah, and Allah will punish those Muslims who did not work for establishing Khilafah. Further he added that some of the Muslim countries are being approached by Hizb-ut-Tahrir



Crl.A.No.390 of 2023

WEB COPY

for Nusrat i.e. Military help to liberate Kashmir from India..."

9. In view of the above facts and circumstances and applying the principles laid down in the case of ***Union of India vs. Prafulla Kumar Samal***, reported in (1979) 3 SCC 4, we are of the opinion that all these allegations are to be considered during the course of full-fledged trial. The case on hand is not that of one which has no evidence at all. Presence of certain allegations would require trial and thus, we do not find any reason to grant discharge.

10. Though the trial Court has not considered certain allegations as rightly pointed out by Mr.Mohan, learned senior counsel for the petitioner, we have gone through the charge-sheet as well as the statements of the protected witnesses which would be sufficient to form an opinion that the petitioner cannot be discharged and necessarily has to undergo trial.



Crl.A.No.390 of 2023

WEB COPY

11. Mr.Mohan, learned senior counsel, made a statement that regarding Accused No.3, this Court has remanded the matter on the ground that Section 15 of the Unlawful Activities (Prevention) Act, 1967, is referred to in the order refusing discharge of the accused persons and the same ground is made available to the petitioner/A-2 also. However, Mr.Karthikeyan objected the same by stating that the case of A-3 was remanded merely on the ground that certain references from Wikipedia were made. However, in the present case, we have independently gone through the charge-sheet and statements of the protected witnesses and therefore, we are not inclined to remand the matter.

12. Remanding the matter would be the last resort for Courts. All the cases are to be decided on merits. Only in the event of arriving at a conclusion that there is no other option and the Court cannot consider certain issues, then alone the matters are to be remanded. Thus, rule is to decide all the cases on merits; remanding the matter is an exception. In the



Crl.A.No.390 of 2023

WEB COPY

present case, we have gone through the facts and circumstances including the documents and arrived at a conclusion that remanding of the case is not required.

13. Therefore, we have arrived at an irresistible conclusion that the petitioner has not made out a case for discharge and consequently, this Criminal Appeal stands dismissed. The trial Court is at liberty to proceed with the trial, however, uninfluenced by the observations, if any, made relating to the facts.

14. The Trial Court has to necessarily take into consideration the judgment of the Hon'ble Supreme Court of India in the case of ***S.G.Vombatkere vs. Union of India***, reported in ***(2022) 7 SCC 433***, with reference to the offence under Section 124A of IPC.

(S.M.S., J.) (V.S.G., J.)
27.08.2024

Index : Yes
NC : Yes



WEB COPY



Crl.A.No.390 of 2023



WEB COPY

To



Crl.A.No.390 of 2023

1. The Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee, Chennai.
2. The Public Prosecutor,
Madras High Court, Chennai.



WEB COPY



Crl.A.No.390 of 2023

S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

(sra)

Crl.A.No.390 of 2023

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