

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.T. SANKARAN
&
THE HONOURABLE MR. JUSTICE B. SUDHEENDRA KUMAR

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

CRL.A.No. 402 of 2015 (A)

AGAINST THE ORDER IN CRL.M.P.NO.69/2015 IN R.C.NO.1/2014/NIA/KOC PASSED
BY THE COURT FOR THE TRIAL OF NIA CASES, ERNAKULAM DATED 23.3.2015.

APPELLANT: ACCUSED NO.4:

ANTONY DAS, AGED 60 YEARS
S/O. ANTONY, LANE NO.9/1249, ANNA NAGAR
NADUMALAI ROAD, VALPARAI, COIMBATORE
TAMIL NADU.

BY ADVS. SRI.S.RAJEEV
SRI.K.K.DHEERENDRA KRISHNAN
SRI.V.VINAY

RESPONDENT: COMPLAINANT:

STATE
REP. BY THE STANDING COUNSEL
NATIONAL INVESTIGATING AGENCY,
HIGH COURT OF KERALA
ERNAKULAM 682 031, (RC NO.1/2014/NIA/KOC)

BY ADV. SRI.M.AJAY, SPECIAL PUBLIC PROSECUTOR FOR NIA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
12.08.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.T.SANKARAN &
B.SUDHEENDRA KUMAR, JJ.**

Crl. Appeal No.402 of 2015 (A)

Dated this the 12th day of August, 2015

JUDGMENT

K.T.Sankaran, J.

This Criminal Appeal arises out of the order dated 23rd March, 2015 in Crl.M.P.No.69/2015 in R.C.No.1/2014/NIA/KOC on the file of the Special Court for the trial of N.I.A. Cases, Ernakulam, by which the court below dismissed the application for bail submitted by the appellant.

2. The appellant was arrested on 27.1.2015 from the Indira Gandhi International Airport at New Delhi. From 27.1.2015 onwards he is continuing in judicial custody.

3. The offence alleged against the accused are under Sections 120B, 489B, 489C read with Section 34 of the Indian Penal Code and Sections 16 and 18 of the Unlawful Activities (Prevention) Act.

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4. According to the prosecution, on 26.1.2013, the Customs Officials intercepted Abid Chullikkulavan Hassan (accused No.1) at Nedumbassery Airport and recovered 1950 fake Indian currency notes of the denomination of ₹500/- from his possession. Accused No.1 came from Dubai. Accordingly, the case was registered at Nedumbassery Police Station as Crime No.122/2013. Subsequently, the case was transferred to CBCID, Kerala and it was re-registered. In the course of investigation, CBCID arrested Muhammed Haneefa (accused No.2), who allegedly had handed over the fake Indian currency notes to accused No.1. It was revealed during investigation that the appellant, who is accused No.4, had arranged the fake Indian currency notes to accused No.2. The court below considered the facts and circumstances of the case and held that there are materials to believe that the accusation against the appellant is prima facie true. The court below also perused the case diary and found that there are serious allegations against the appellant and the contention put forward by the learned Special Prosecutor that the appellant has got connection with the terrorist group could not be ruled out. The court below also held that

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as per the proviso to sub-section (5) of Section 43D of the Unlawful Activities (Prevention) Act, the accused persons shall not be released on bail, if, on a perusal of the case diary or the report made under Section 173 of the Code of Criminal Procedure, the Court is of the opinion that there are reasonable grounds for believing that the accusation against the accused is prima facie true. The court below also expressed the view that the apprehension voiced by the Special Prosecutor that if the appellant is released on bail there is every chance to influence the witnesses, is genuine. Accordingly, the court below dismissed the application for bail as per the order dated 23rd March, 2015, which is under challenge in this Criminal Appeal.

5. The Criminal Appeal was filed on 10.4.2015. The proceedings paper would show that several orders were passed touching upon the final report and the question whether the period for completing the investigation was extended or not, and that caused the delay in disposal of the Criminal Appeal.

6. It is submitted by the learned counsel for the appellant that a report called 'final report' was filed before the court below and it

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cannot be treated as final report under Section 173(2) of the Code of Criminal Procedure in any sense of the term. It is pointed out that in paragraph 18.4 of the final report, it is stated thus: “It is, further submitted that the investigation of the case is being continued and further evidence is also being collected against the accused arrested as well as the absconders.” According to the learned counsel for the appellant, this statement in the report itself is sufficient to arrive at the conclusion that no final report is filed within even the extended period and, therefore, the appellant is entitled to default bail under the second proviso to Section 167(2) of the Code of Criminal Procedure.

7. The learned Special Prosecutor submitted that even without a statement as made in paragraph 18.4 of the final report, the investigating agency could do the same as mentioned in paragraph 18.4. According to the learned Special Prosecutor, the final report was filed within time and therefore, the appellant is not entitled to get default bail. He also submitted that in the Criminal Appeal, no such question is raised and, therefore, it is not proper for the appellant to raise all these contentions to invoke the power of the

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Appellate Court beyond the appellate powers as provided in Section 21 of the N.I.A. Act.

8. The contentions which are raised now by the learned counsel for the appellant were not raised before the court below. The court below had no occasion to consider those contentions and, therefore, we do not think it proper to consider those contentions in this Criminal Appeal. The appellant would be free to raise the contentions which are raised hereinabove before the court below and contend that he is entitled to default bail. It is submitted by the learned counsel for the appellant that the appellant could not move the court below for the relief which is now prayed, since the Criminal Appeal was pending. It is submitted that it would be highly improper for the appellant to pursue the remedy before the High Court as well as before the court below for the same relief, and therefore, the appellant did not move any application before the court below contending that he is entitled to default bail.

We do not find any ground to interfere with the order passed by the court below. However, the appellant would be entitled to raise

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all his contentions with respect to default bail and also raise the contention that the report filed by the National Investigation Agency is not a final report within the meaning of Section 173(2) of the Code of Criminal Procedure. The court below shall consider all the contentions put forward by either side and pass appropriate orders at the appropriate stage in accordance with law. Leaving open this right of the appellant, the Criminal Appeal is dismissed. We make it clear that we have decided in this appeal only the legality or otherwise of the order dated 23.3.2015 and all other contentions are left open.

K.T.SANKARAN
Judge

B.SUDHEENDRA KUMAR
Judge

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