

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. 708 of 2015 (A)

AGAINST THE ORDER IN THE BAIL APPLICATION C.M.P.NO.113/2015 IN
S.C.NO.2/2011 ON THE FILE OF THE SPECIAL COURT FOR NIA CASES II,
ERNAKULAM.

CRIME NO. 257/2008 OF MUNDAKAYAM POLICE STATION, KOTTAYAM

APPELLANT/PETITIONER/A13:

MOHAMMED ASIF, AGED 28,
S/O. MOHAMMED KADIR, 11/13-45,
NETAJI NAGAR, BEST AVERPET
KARNATAKA (NOW IN JUDICIAL CUSTODY IN BELGAM JAIL)

BY ADVS. SRI.V.T.RAGHUNATH
SMT.C.V.RAJALAKSHMI
SRI.P.K.ABOOBACKER(EDAPPALLY)

RESPONDENT/RESPONDENT:

STATE,
REPRESENTED BY NATIONAL INVESTIGATION AGENCY, KOCHI
BY SPECIAL PUBLIC PROSECUTOR FOR NIA,
HIGH COURT OF KERALA-682 031.

BY 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:

APPENDIX

- Annexure A1 Copy of the Bail Application dated 22.5.2015.
- Annexure A2 Copy of the objection by the respondent dated 29.5.2015.
- Annexure A3 Copy of the paper cutting regarding the news of acquittal
in the Hubli Case dated 1.5.2015.

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

Crl.Appeal No.708 of 2015 (A)

Dated this the 12th day of August, 2015

JUDGMENT

K.T.Sankaran, J.

The application for bail filed by the appellant before the Special Court for Trial of NIA Cases, as CMP.No.113/2015 in S.C.No.2/2011/NIA was dismissed by the court below as per the order dated 5.6.2015, which is under challenge in this Criminal Appeal.

2. The appellant is accused No.13 in the case. The prosecution case is that a secret training camp was conducted by the activists of SIMI, a banned organisation, at Thangalpara in Wagamon from 10.12.2007 to 12.12.2007. There are 37 accused in the case. It was alleged by the prosecution that the accused persons hailing from different States in India, namely, Karnataka, Gujarat, Uttar Pradesh and Kerala, who are all members of SIMI and

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involved in anti-national activities, organised a secret camp to fight against India. In the training camp, the participants were imparted training in arms and ammunition, manufacture of bombs and similar weapons. Physical training, drill, etc. were also conducted. The intention was to wage war against the Government of India and to disturb peace and tranquility in India by stirring up communal feelings and promoting enmity between different communities.

3. Originally, the case was registered as Crime No.257 of 2008 at Mundakkayam Police Station on 19.6.2008, against some of the accused. Subsequently, investigation was taken over by the Crime Branch. As per the notification dated 24.12.2009 issued by the Ministry of Home Affairs, direction was given to the National Investigating Agency to take up the investigation. Accordingly, the National Investigating Agency took over the investigation and re-registered the case as Crime No.4/2010/NIA/New Delhi.

4. After completing the investigation, final report was filed by NIA alleging offences under Sections 120B, 122, 124A and 153A read with Section 34 IPC, Sections 10(a)(i) and 13(1)(a) of the

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Unlawful Activities (Prevention) Act, Sections 25 and 27 of the Arms Act and Sections 3 and 4 of the Explosive Substances Act.

5. The appellant was arrested and he was remanded to judicial custody on 13.8.2009. From that date onwards, he continues to be in judicial custody.

6. The bail applications submitted by the appellant were rejected by the Special Court for Trial of NIA Cases.

7. According to the appellant, he is a MBBS Graduate and he was about to start his House Surgency. At that time, he was falsely implicated in the case. The appellant is a person belonging to Karnataka State. It is stated that he was one of the accused in S.C.No.49 of 2008 on the file of the Sessions Court, Hubli in Karnataka State and that case ended in acquittal. It is also stated that there are 78 witnesses and voluminous documentary evidence in the present case and even after the filing of the charge sheet before 4½ years, charge has not been framed.

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8. It is pointed out by the Special Prosecutor that some of the accused in the present case are involved in similar cases in other States like Gujarat and that causes the delay in the framing of charge as well as commencement of the trial. It is submitted that NIA is taking all necessary steps to expedite the trial of the case by adopting video conferencing method and even by getting orders for conducting camp sitting of the Court in Gujarat. At the same time, it is submitted that there are Intelligence reports that it is very hazardous and dangerous to transport the accused persons to a distant State. At any rate, it is submitted that all possible steps will be taken by the prosecuting agency to see that the case is tried at the earliest.

9. Several contentions were put forward before the court below. Arguments were advanced on the basis of Section 43D(5) of the Unlawful Activities (Prevention) Act. The court below, relying on the decisions of this Court in **Abdul Sathar v. Superintendent of Police [2014 (2) KLT SN 53 (C.No.71)]** and **Muhammed Navas v. Station House Officer [2009(3) KLT SN 64 (C.No.62)]**, rejected the

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contentions put forward by the appellant. Another contention raised by the appellant based on Section 436A of the Code of Criminal Procedure was also rejected by the court below by taking the view that the punishment provided for the offence involved in the present case includes life imprisonment and, therefore, Section 436A has no application. The learned counsel for the appellant submitted that for offences under Sections 122 and 124A though life imprisonment is also provided, punishment for a lesser term is also provided depending on the gravity of the offence. The learned counsel submitted that the facts and circumstances involved in the case on hand would clearly indicate that the major penalty of life imprisonment is not likely to be imposed in the present case, even if it is found that the appellant is guilty. The learned counsel submitted that the court below did not consider this contention raised by the learned counsel for the appellant. The learned counsel for the appellant submitted that from 2009 onwards, the appellant is in jail and his grievances would be, to a great extent, redressed if the trial of the case is conducted as expeditiously as possible. It is also submitted by the learned counsel for the appellant that the crime involved in the present case was registered earlier in point of time

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than the crimes registered against some of the other accused in the State of Gujarat as mentioned above.

10. The learned Special Prosecutor submitted that all earnest efforts would be taken by the prosecuting agency to see that the trial of the case is commenced and completed without any delay. It is assured that the prosecuting agency would not make any attempt to protract the trial of the case. Only on the ground that some of the other accused involved in the present case are also accused in other cases in other States, it would not be proper that the appellant should be incarcerated in jail indefinitely. He has got a right to get an expeditious trial of the case. Every necessary step shall be taken by the court below to ensure that the trial of the case is commenced and completed without delay. The learned Special Prosecutor submitted that the prosecuting agency proposes to move the administrative side of the High Court so that video conferencing can be conveniently conducted in the premises of the High Court.

Recording the submission made by either side, the Criminal Appeal is dismissed. If concrete steps are not taken within six

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months to frame charge, the appellant would be entitled to approach the court below praying for granting bail to him and, in such a situation, the court below shall consider the application on the merits notwithstanding anything contained in the order impugned.

K.T.SANKARAN
Judge

B.SUDHEENDRA KUMAR
Judge

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