

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Delivered on: 03.06.2015

Reserved on : 22.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.32224 of 2014

1.Thiruselvam @ Murasu
2.Thangaraj @ Thamizharasan
3.Kaviyarasan
4.Kalailingam

... Petitioners/Accused 1 to 4

Vs

State rep by
The Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad (Camp at Puducherry)
(R.C.No.1/2014/NIA/HYD)

... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in the order dated 20.06.2014 passed by the Special Judge for NIA Cases, Puducherry in R.C.No.1/2014/NIA/HYD on the file of the National Investigation Agency, Hyderabad (Camp at Puducherry) and quash the same and consequently, release the petitioners on bail.

For Petitioners : Mr.M.Radhakrishnan

For Respondent : Mr.V.Parivallal
Senior Central Government
Standing Counsel

O R D E R

The accused, who are facing trial in Special S.C.No.5 of 2014 before the Special Judge, Puducherry for offences under Sections 120 B IPC r/w Sections 3 & 4 of the Explosive Substances Act, 1908 and Sections 16, 18 & 20 of the Unlawful Activities (Prevention) Act, 1967, are the petitioners before this Court.

2.Shorn of immaterial, the bare facts necessary for the adjudication of this petition are as follows:

There was an explosion on 29.01.2014 near the residence of a former Minister in Puducherry, for which a case in Crime No.25 of

2014 under Section 4 of the Explosive Substances Act 1908, was registered against unknown persons by the Inspector of Police, Odiansalai Police Station, Puducherry. The Q-Branch CID Police of Tamil Nadu arrested the petitioners 1, 2 & 3 on 10.02.2014 in a case in Crime No.47 of 2014 and they were produced before the Judicial Magistrate, Melur on 11.02.2014 and were remanded to custody. The 4th petitioner was arrested by Q-Branch CID Police, Tamil Nadu on 13.03.2014 in a case in Crime No.47 of 2014 and was produced before the Judicial Magistrate, Melur on 14.03.2014 and remanded to judicial custody. During the course of investigation in Crime No.47 of 2014, it came to light that these petitioners were involved in the Puducherry bomb Blast case in Crime No.25 of 2014. Therefore, the National Investigating Agency took up the investigation of Odiansalai Police Station Crime No.25 of 2014 and effected notional arrest of these petitioners in jail on 03.04.2014, for their involvement in the bomb blast at Puducherry. On P.T.Warrant, these petitioners were produced on 09.04.2014 before the Special Court for NIA Cases at Puducherry and were remanded from time to time till 18.07.2014. In the mean time, they were also taken to the custody of the Police on the orders of the Special Judge, Puducherry, for investigation by the NIA and were returned to judicial custody.

3.It is the contention of the learned counsel for the petitioners that 90 days remand period as envisaged under Section 43 D (2) of the Unlawful Activities (Prevention) Act, 1967 expired on 07.07.2014, in respect of petitioners 1 to 3 on 05.08.2014 and therefore, the custody of the petitioners from 07.07.2014 to 18.07.2014 was illegal and the remand order has to be quashed. The learned counsel for the petitioner places heavy reliance on the judgment of the Hon'ble Supreme Court reported in (1994) 4 Supreme Court Cases 602 [Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others].

4.On notice to the respondent, Mr.R.K.Sharma, the Deputy Superintendent of Police, NIA, Hyderabad has filed a counter affidavit wherein, in paragraph no.6, he has stated as follows:

"6.I submit that the various averments in para 4 of the quash petition are not true and correct as the report of the Public Prosecutor filed on 30.06.2014 stated bonafide reasons to extend the remand beyond the period of 90 days since the investigation by the Respondent was pending at the time of remand."

5.This Court called for report from the trial Court and found that the Public Prosecutor in the case appears to have filed an application for extension of the remand in terms of the proviso to Section 43 D (2) of the Unlawful Activities (Prevention) Act on 30.06.2014 itself, though 90 days period was expiring only on 07.07.2014. Had the prosecution not filed the extension petition on

or before 07.07.2014, then the accused would have been willy nilly entitled to compulsory bail as held by the Apex Court in Union of India (UOI) Vs. Nirala Yadav, [2014 (8) Scale 9].

6.It is seen that investigation was completed in the case and final report was filed on 30.09.2014 itself and the Special Court has taken it on file as Special S.C.No.5 of 2014 and after compliance with Section 207 Cr.P.C., the case is posted for framing of charge. In the light of the fact that the final report was filed before the expiry of 180 days as provided under the proviso to Section 43 D (2) of the Unlawful Activities (Prevention) Act, subsequent remand stood regularised under Section 309 Cr.P.C.

7.Before parting, I cannot help, but comment about the following averments in paragraph no.15 of Mr.R.K.Sharma's counter affidavit:

"The claims of the petitioners cannot be admitted in the light of the legal provisions and the case law in Pragnya Singh Takhur vs State of Maharashtra (2011) 10 SCC where the Honorable Supreme Court has held that right for default bail under 167 (2) CrPC is not absolute or infeasible and should be based on merits."

The proposition of law laid down in Pragnya Singh Takhur 's case in the year 2011 has been declared as bad law by the Supreme Court in Union of India (UOI) Vs. Nirala Yadav, 2014 (8) Scale 9. It is better for Investigating Officers to state in their counter affidavits only the factual positions leaving out the legal propositions for their lawyers to proffer, so as to avoid such Fauxpas.

8.In view of the above, it cannot be stated that there was non-compliance of the proviso to Section 43 D (2) of the Unlawful Activities (Prevention) Act and hence, the petition is devoid of merits and the petition is liable to be dismissed. Accordingly, the Criminal Original Petition is dismissed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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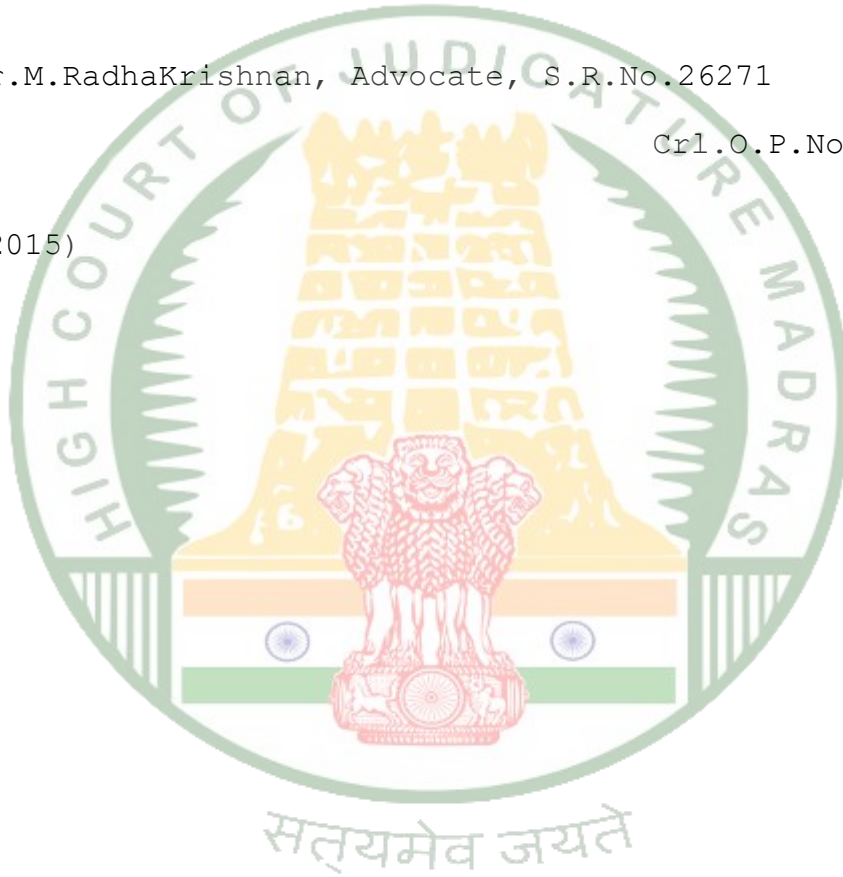
To

1. The Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad (Camp at Puducherry)
2. The Public Prosecutor,
Puducherry.
3. The Special Judge for NIA Cases,
Puducherry.

+1cc to Mr.M.RadhaKrishnan, Advocate, S.R.No.26271

Cr1.O.P.No.32224 of 2014

VGI (CO)
CA(16/06/2015)



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