

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.11.2017

DELIVERED ON : 05.12.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN  
AND  
THE HON'BLE MR.JUSTICE SATRUGHANA PUJAHARI

Criminal Appeal No.695 of 2017

Chandra .. Appellant/Accused No.29  
W/O.Sundaramurthy

Vs.

State Rep. by  
Deputy Superintendent of Police,  
Q Branch CID,  
Dharmapuri. ... Respondent/Complainant

Prayer: Appeal filed under Section 34 of the Prevention of Terrorism Act, 2002 [POTA Act] against the order in Crl.M.P.No.360 of 2017 in Spl.C.C.No.5 of 2003 dated 23.10.2017, under Sections 120-B, 148, 149, 333 and 307 I.P.C. read with Section 3(2) (b) and 3(5) of POTA Act, 2002.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.R.Ravichandran,  
Government Advocate (Crl.Side)

J U D G M E N T  
सत्यमेव जयते

M.SATHYANARAYANAN, J.

The appellant is the petitioner in Crl.M.P.No.360 of 2017 and is arrayed as A-29 in Spl.C.C.5 of 2003, pending on the file of the Special Court Under the Prevention of Terrorism Act (POTA), 2002 [Sessions Court for Exclusive Trial of Bomb Blast Cases], Chennai at Poonamallee, Chennai-56. The appellant filed the above said petition under Section 437 read with 439 Cr.P.C. for her enlargement on bail pending trial of the above said Sessions Case and vide, impugned order dated 23.10.2017, the trial Court has dismissed her bail application and challenging the legality of the same, has filed this appeal.

2. Facts leading to the filing of this appeal have been narrated in the impugned order, which is the subject matter of this appeal and therefore, it is unnecessary to restate the facts except to cull out the necessary relevant facts for the disposal of this appeal:

2.1. As per the final report filed by the respondent before the Trial Court, there are 33 accused and out of them, A3-Gurusamy, S/o.Raja, A10- Boothipatti Ramachandran, A11- Naveen @ Prasanth @ Prasath, A30-Sundaramoorthy, A31-Chandra, A32-Bharathi are absconding and A33 namely Siva @ Partheeban died.

2.2. Uthangarai Police Station had registered two cases in Crime Nos.1004/2002 and 1005/2002 respectively and as per the allegations in Crime No.1004/2002, Grade I Police Constable, namely Muniappan attached to District Special Branch, Dharmapuri received an information on 23.11.2002 that 10 accused persons including 3 women were doing "Karate" practise for the past three days in a mango grove owned by one Murugesan which is situated at Salaijogipatti Village, Dharmapuri District. A team led by Inspector of Police, Naxalite Special Duty Wing, Dharmapuri District conducted search in the said mango grove and he came to know that the said persons left the place on account of objections raised by villagers and subsequently, on the same day, the owner of the mango grove namely Murugesan was interrogated and he disclosed that it is owned by one Saroja, who is his wife and it is leased out to A3-Gurusamy (absconding accused) and he inturn permitted the accused persons to practise "Karate in the mango grove.

2.3. Search was conducted on the next day viz., 24.11.2002 at 7.30a.m. in the thatched shed put up in the said place, wherein explosive substances and firearms were seized under cover of mahzar. A1-Martin @ Tamilselvan, S/o.Devadoss, A2-Murugesan, S/o.Munusamy and one Prabhakaran, S/o.Gurusamy were arrested at 8.30 a.m. on 24.11.2002 and they were remanded to judicial custody on 25.11.2002.

2.4. In Crime No.1005/2002, the allegations are, upon hearing information at about 11.30 a.m. on 24.11.2002 that 25 persons were moving suspiciously with shoulder bags and firearms towards Kallur Village, Dharmapuri District, the Inspector of Police, Naxalite Special Duty Wing, Dharmapuri District along with his team conducted a search in the villages in and around Periya Kanagampatti Village, Dharmapuri District and since the said party were confronted by them armed with lethal weapons, fires were exchanged and as a consequence, one person, namely Siva @ Partheeban belonging to the said party died due to bullet injury and four police personnel including the Inspector of Police sustained pellet injuries. Two of them, namely

Mathaiyan/A4 and Suresh/A5 were arrested and rest of the accused fled away from the scene of occurrence and two other accused persons were also arrested on the same day, namely Raja/A7 and Kumar @ Venkatesan @ Palanisamy/A6.

2.5. Yet another Crime No.1006/2002 registered by the Uthangarai Police Station was with regard to suspicious movement by some persons and they were confronted at about 4.00 p.m. on 24.11.2002 and despite they were asked to surrender, they opened fire towards the police party and 15 accused persons including 4 women were arrested at 5.30 p.m. on 24.11.2002 and they were remanded to judicial custody.

2.6. After the said incident, some of the accused persons, namely Balan/A26, Duraisingavel/A27, Sundaramurthy/A30, Vijaya @ Ramani/A28, Chandra/Appellant/A29, Bharathi/A32 and Yasodha ran away from the place of encounter and took shelter in a mango grove at Kurugapatty in Dharmapuri District and based on specific information, the said place was searched on 25.11.2002 and on seeing the police party, they started firing, in which 3 police personnel sustained grievous gun shot injuries and A26 sustained superficial bullet injury on his head and he was arrested and rest of the accused fled away from the scene of occurrence, which resulted in registration of a case in Crime No.434/2002 on the file of Kallavi Police Station.

2.7. The cases after investigation has culminated into a final report, which was taken on file in Special C.C.No.5 of 2003 by the Trial Court.

2.8. The appellant/A-29, in the application for bail, took a stand that she has nothing to do with the commission of offences and there is no evidence available as to her confession or recovery of incriminating articles from the appellant or any other incriminating circumstances. It is further stated by the petitioner/appellant that the alleged occurrence took place on 24.11.2002 and the cases after investigation, has culminated into a charge sheet, which was taken on file in Spl.C.C.No.5 of 2003 and it was spilt up on account of abscondance of the accused as Spl.C.C.No.1 of 2016 and the only reason for implicating her is on account of her husband Sundaramurthy/A30 has also been implicated and she has not absconded at all and she was having a permanent place of abode and hence prayed for her enlargement on bail.

2.9. The prosecution had filed it's counter strongly opposing the bail application by stating among other things that the petitioner herein had absconded herself and thereby avaded her arrest and hence, proclamation was initiated under Section 82 CrPC and in pursuant to the order passed by the Trial Court,

proclamation requiring the appearance of the petitioner/appellant before the Trial Court on 15.04.2015 was published in leading newspapers on 08.03.2015 and announcement was also made through "Tom Tom" in the village of the petitioner and despite publication of proclamation and announcement through "Tom Tom", the petitioner failed to appear before the Trial Court on 15.04.2015 and therefore, final orders were passed by the Trial Court on 18.04.2015 in the proclamation application.

2.10. The Government also issued G.O.(Ms)No.21 dated 06.01.2005 announcing cash reward of Rs.2 lakhs to persons who give any clue/useful information about the whereabouts of the absconding accused which include the appellant herein and several special teams were formed to nab them and only after a lapse of 14 years, it yielded result in the form of arrest of the petitioner/appellant in Crime No.1/2016 registered by Q Branch CID, Karur and she was produced before the Trial Court on the strength of P.T. Warrant and was remanded to judicial custody. The prosecution has also denied that she has nothing to do with the commission of offences and as per the confession of the co-accused, her role has been revealed and it is also supported by seizure of material objects and further took a stand that she is a member of Radical Youth League (RYL), which is a frontal organization of Communist Party of India (Maoist) and had committed heinous offences and she had also actively participated and indulged to further the activities of the banned terrorist organization CPI (Maoist) at Tri junction area of Tamil Nadu, Kerala and Karnataka and also involved in the cases in Crime No.122 of 214 registered by Krishanapuram Police Station and Crime No.1 of 2016 registered by Q Branch CID, Karur. The prosecution also took a stand that in the event of bail being granted to the petitioner, she will once again abscond and she will not be available for due process of law and as a consequence, the trial of the case would get delayed and already the case has been spilt up in respect of absconding accused and prayed for dismissal of the bail petition.

2.11. The Trial Court, on consideration of the materials placed before it, found that on account of absconding of the petitioner/appellant, the case against her was split up and tried separately in Spl.C.C.No.1/2009 and despite proclamation and announcement through "Tom Tom", she failed to appear before the Trial Court on 15.04.2015 and having satisfied that the proclamation under Section 82 Cr.P.C. was duly effected, recorded the same vide order dated 18.04.2015 in CrI.M.P.No.372 of 2014. The Trial Court noted that perusal of the records reveal that after framing the charges against the accused Bharathi/A32, the trial was about to commence and at that time, the learned counsel who appeared for the petitioner/appellant withdrawn his appearance and the accused themselves filed a

petition under Section 304 Cr.P.C. seeking appointment of specified counsel through the Legal Services Authority and the said petition was allowed on 15.06.2016 and however, the very same counsel who withdrawn appearance earlier, along with another Advocate, entered appearance on behalf of the accused and therefore, intention of the accused is only to drag on the proceedings and even after lapse of 14 years, trial could not be commenced and taken note of the fact that the petitioner/appellant successfully evaded arrest for quite long time and was secured with great difficulty after long time and further that the case in Spl.C.C.No.1/2016 has now been clubbed with Spl.C.C.No.5/2003 and further that charges are yet to be framed and therefore, thought fit to dismiss the bail application and accordingly dismissed the bail petition and hence this appeal.

3. Mr.R.Sankarasubbu, learned counsel appearing for the appellant/A29 would submit that except the fact that the appellant happens to be the wife of one of the alleged prime accused, namely Sundaramurthy/A30, she has nothing to do with the commission of offences and under the guise of interrogation, one Siva @ Partheeban has been shot dead and even in the charge sheet, specific role played by the appellant has not been indicated except the fact that she is a member of banned organization. It is further submitted by the learned counsel appearing for the appellant that merely expressing her views in support of an organization would not lead to the conclusion that she is acting against the interest of the State and drawn the attention of this Court to the judgment rendered by the Hon'ble Supreme Court of India in State of Kerala v. Raneef [(2011) 1 SCC 784]. It is the further submission of the learned counsel appearing for the appellant that admittedly "The Prevention of Terrorism Act, 2002" has been repealed by "The Prevention of Terrorism (Repeal) Act, 2004" and therefore, charge under section 3(2)(b) of the said Act cannot be proceeded with and her bail application, in the facts and circumstances, is to be considered strictly in accordance with the first proviso to Section 437 Cr.P.C. and she being a women, aged about 50 years and would further add that in the event of her enlargement of bail, she will not abscond and fully cooperate for expeditious conclusion of trial and prays for appropriate orders.

4. Per contra, Mr.R.Ravichandran, learned Government Advocate (Crl. Side) appearing for the respondent/State strongly opposed this appeal by contending that the accused was absconding for nearly 14 years and with great difficulty, she was arrested on 21.07.2016 and remanded to judicial custody and it is false to state that she is permanently residing at Karur. It is the further submission of the learned Government Advocate (Crl.side) that her husband namely Sundaramurthy/A30 has already

been convicted in 7 cases involving heinous offences and the appellant, who is his wife, had actively connived and instigated the commission of offences and she is also a member of a banned organization and in the event of her enlargement on bail, she would definitely abscond and thereby impede the progress of the case and since she was absconding, the case against her was split up and would further add that frequently Advocates withdrawn their appearance for the accused and subsequently filed petitions for appointment of Advocates of their own choice through Legal Services Authority, but once again the same counsel entering appearance through some other Advocate for the very same accused and therefore, evidencing the fact that their intention is to prolong the commencement of trial and hence prays for dismissal of this appeal and for a direction to the Trial Court to conclude the trial and pronounce verdict as expeditiously as possible.

5. This Court paid it's best attention to the rival submissions and also perused the entire materials placed before it.

6. A perusal of the charge sheet which is taken cognizance by the Trial Court would prima facie indicate that the appellant/A29 along with A30 and A32 had entered into criminal conspiracy to commit terrorism and thereby threatened the unity, integrity, security and sovereignty of this country and to create terror in the mind of the people in order to implement the principles of terrorist organization, namely Radical Youth League - a frontal organization of Communist Party of India (Maoist) and they have committed the offences for which they were charged.

7. According to the prosecution, right from the occurrence on 24.11.2002, the appellant was absconding and only on 21.07.2016, she was arrested and remanded to judicial custody and as a result of her abscondance, the case against her was split up in Spl.C.C.No.1/2009 and on securing her, the split up case is to be tried along with the main case. The prosecution also pointed out that frequent requests are made to change counsel and filing of petitions to engage counsel of their choice through the Legal Services Authority and when the said request was conceded, the counsel, who had earlier withdrawn appearance, started appearing along with another counsel for the very same accused.

8. The judgments relied on by the learned counsel appearing for the appellant viz., Vijaykumar Baldev Mishra alias Sharma v. State of Maharashtra [(2007) 12 SCC 687] and State of Kerala v. Raneef [(2011) 1 SCC 784], in the considered opinion of the Court, have no application to the facts of this case.

9. In Vijay Kumar Baldev Mishra alias Sharma v. State of

Maharashtra [(2007) 12 SCC 687] Review Committee came to the conclusion that the appellant therein inter alia had no intention to strike terror in people or any section of the people and insofar as the commission of offence is concerned, it was committed after 24.05.1995 and therefore, TADA Act has no application to the said case.

10. In *State of Kerala v. Raneef* [(2011) 1 SCC 784], the accused was a Doctor and having found that in discharging his noble profession/duty, he has applied stitches in an emergency and that his role cannot be doubted and having found that his case was different from alleged offences, was permitted to be enlarged on bail.

11. It is also brought to the knowledge of this Court that six women accused were granted bail and one of them namely Bharathi is absconding and she is yet to be apprehended. Though POTA Act was repealed, Section 2 of the Repeal Act, 2004 [Act 26 of 2004] saves the previous operation of, or anything duly done or suffered under the Principal Act etc. POTA Act came into force on 28.03.2002 and the offences were committed during November 2002 and despite the Repeal Act, 2004, in the light of Section 2, act done by the prosecution as per the earlier Act are saved.

12. It is a well settled position of law that in granting or non-granting of bail in non-bailable offence, the primary consideration is the nature and gravity of the offence and at the stage of granting of bail, the Court can only go into the question of the prima facie case established for granting bail and the question of credibility and reliability of prosecution witnesses can be tested during the trial.

13. In *State of Rajasthan v. Balchand* [(1977) 4 SCC 308], it was observed as follows:

"2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime...."

14. In *Kalyan Chandra Sarkar v. Rajeesh Ranjan* [(2004) 7

SCC 528], it is observed as follows:

"11. The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding, why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge."

15. It is the primordial submission of the learned counsel appearing for the appellant that the appellant, being a undertrial prisoner, is detained for an indefinite period on the pretext of non-completion of trial and thereby, offending Article 21 of the Constitution of India and therefore, she is to be enlarged on bail and however, the delay in completion of trial is not the sole factor and it should not be applied to all cases mechanically and as pointed out by the prosecution that one of the accused is adopting dilatory tactics and one of the accused, namely Bharathi/A32 is also absconding and as such, it cannot be said that the prosecution has contributed to the delay in concluding the trial.

16. In N.Kannapan v. State (Union Territory) Andaman and Nicobar Islands [(2013) 2 SCC 177], grant of bail in respect of the accused involved in the commission of Explosive Substances Act came up for consideration and in para 20, it is observed as follows:

"20. Having considered the assertions made at the hands of the rival parties, we are satisfied, that there is prima facie material to establish the involvement of the petitioners in activities involving the provisions of the Explosive Substances Act, 1908. The consequences of such violation are extremely serious. The minimum punishment on conviction is 10 years rigorous imprisonment. For more serious activities, the punishment can extend to imprisonment

for life, and with death penalty. In the pleadings, and during the course of hearing, we were informed that some of the accused are still absconding. Obviously all the accused are financially well placed. Releasing them from jail at the present juncture, when the prosecution has not even commenced to examine the main witnesses, could prove detrimental to the eventual outcome of the trial. At least till the culmination of the evidence of the material witnesses, it is not proper to order the release of the petitioners on bail. In the facts and circumstances noticed hereinabove, we hereby decline the prayer for bail made by the petitioners. The impugned orders passed by the High Court are accordingly affirmed."

17. The allegations levelled against the appellant as well as the other accused are grave and serious in nature and in prima facie appears that they are waging war against the State and thereby jeopardising the harmony and integration of this country. It is also to be noted at this juncture that the appellant was successfully absconding for nearly 14 years from 24.11.2002 and she was secured only on 21.07.2016 and therefore, this Court is of the view that it is not a fit case that the appellant is to be enlarged on bail pending trial.

18. This Court, on an independent application of mind to the materials placed, is of the considered view that the reasons assigned by the Trial Court are proper and sustainable and no error apparent or perversity attached to the said reasons.

19. In the result, this Criminal Appeal is dismissed, confirming the order dated 23.10.2017 made in CrI.M.P.No.360 of 2017 in Spl.C.C.No.5 of 2003 on the file of the Special Court Under the Prevention of Terrorism Act (POTA), 2002 [Sessions Court for exclusive trial of Bomb Blast Cases], Chennai at Poonamallee, Chennai-56.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

WEB COPY

Sub Assistant Registrar

jvm

To

1. THE SPECIAL COURT UNDER THE PREVENTION OF  
TERRORISM ACT (POTA), 2002  
[SESSIONS COURT FOR EXCLUSIVE TRIAL OF BOMB BLAST CASES],  
CHENNAI AT POONAMALLEE, CHENNAI-56.

2.THE DEPUTY SUPERINTENDENT OF POLICE,  
Q BRANCH CID, DHARMAPURI.

3.THE PUBLIC PROSECUTOR,  
MADRAS HIGH COURT, CHENNAI.

4.THE SUPERINTENDENT OF CENTRAL PRISON,  
WOMEN PRISON, THIRUCHIRAPALLI.

5. THE DISTRICT COLLECTOR/DISTRICT MAGISTRATE,  
DHARMAPURI.

6. THE DIRECTOR GENERAL OF POLICE,  
TAMIL NADU, MYLAPORE, CHENNAI 4

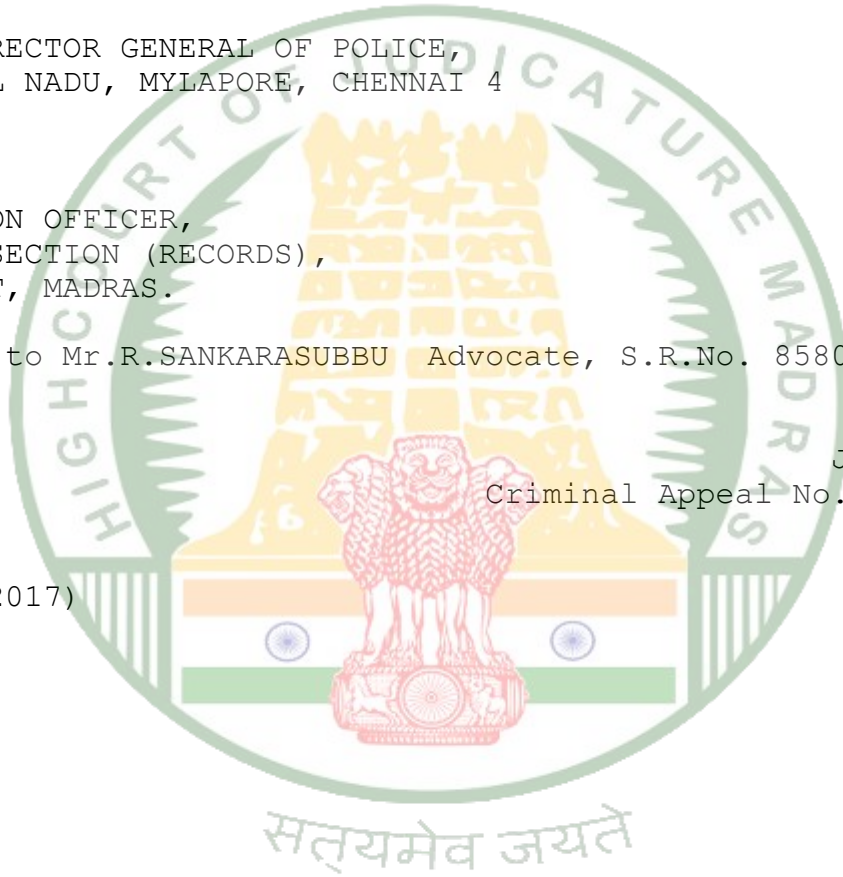
COPY TO

THE SECTION OFFICER,  
CRIMINAL SECTION (RECORDS),  
HIGH COURT, MADRAS.

+1cc to Mr.R.SANKARASUBBU Advocate, S.R.No. 85805

Judgment in  
Criminal Appeal No.695 of 2017

BR(CO)  
TR(20/12/2017)



WEB COPY