

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2017

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

AND

THE HONOURABLE MRS. Dr.JUSTICE ANITA SUMANTH

CRL.A.No.758 of 2016

Thangaraj @ Thamizharasan Appellant

Vs

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

Appeal filed u/s.21 of the National Investigation Agency Act, 2008 against the order passed in Crl.M.P.No.1471/2016 in Special S.C. No.5 of 2014 dated 27.09.2016 by the learned Principal Sessions Judge, Puducherry.

For Appellant : Mr.M. Radhakrishnan
for M/S.P. Pugalenth

For Respondent : Mr.R. Karthikeyan
Spl.Public Prosecutor
(NIA) Act cases

JUDGMENT

This is an appeal filed under Sec.21 of the National Investigation Agency Act of 2008, challenging the order of Special S.C. No.5 of 2014 dated 27.09.2016, by the Special Court, Puducherry, under the National Investigation Agency Act, declining to grant bail to the appellant herein, in the case in R.C.No.1/2014/NIA/HYD under Sec.307 IPC, Sec.4 of Explosive Substances Act, 1908 and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967.

2. We have heard the learned counsel for the appellant and the learned counsel for the respondent and also perused the records carefully.

3. It is brought to our notice by the learned counsel for the appellant that number of grounds were raised by the appellant before the trial Court in order to persuade the trial Court to grant bail, pending trial of the case. The learned counsel would submit that the respondent filed a counter, wherein, he disputed the claims made by the appellant.

4. It is the contention of the learned counsel for the appellant that the trial Court had not considered any ground raised in the bail petition as well as the objections of the respondent. The learned counsel would further submit that the order of the learned Judge is a non-speaking order and therefore, the same cannot be sustained.

5. The learned counsel appearing for the respondent opposed the appeal. According to him, a perusal of the police report would clearly go to prove that there is a very strong prima-facie case against the appellant, making out offences under Secs.307 IPC, Sec.4 of Explosive Substances Act, 1908 and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967. The learned counsel would further submit that though the learned Judge has not expressed in clear terms that there was prima-facie case, in fact, according to him, the learned Judge meant that there was prima-facie case and therefore, the appellant is not entitled for bail. The learned counsel would therefore submit that this appeal may be dismissed.

6. We have considered the above submissions.

7. At the outset, we should say that this is not a petition filed by the appellant under Sec.439 of Code of Criminal Procedure, seeking bail. This is an appeal. It is needless to point out that under Sec.439 of the Code of Criminal Procedure, the High Court does not exercise any appellate power against the order of the lower Court refusing bail. Under such provision, the High Court exercises its original jurisdiction and so that the High Court could evaluate the grounds raised by the petitioner and the materials placed in support of the petitioner's case as well as the police records and the other materials placed by the respondent police so as to come to the conclusion as to whether the accused would be entitled to bail or not.

8. In this Appeal, such course is not possible because under National Investigation Agency Act, any order, including an order refusing to grant bail by the Special Court under National Investigation Agency Act is appealable as provided under Sec.21 of the National Investigation Agency Act, 2008. As

the appellate Court, exercising appellate jurisdiction, it is for this Court to examine as to whether the order of the lower Court could be sustained or not. This Court, in our considered view, cannot evaluate all the materials placed before this court de-hors the order of the trial Court. Since it is an order either granting or refusing bail is an appealable order under Sec.21 of the Act, the Special Court is expected to pass a speaking order, which should reflect the application of mind of the Court and evaluation of all the points raised by both the parties.

9. Here, in the instant case, though the learned Sessions Judge has passed the order running to four pages, it contains only the narration of the submissions made by the petitioner, the counter filed by the respondent etc. The discussion portion is found only in paragraph 6, wherein, the learned Judge has stated as follows: "This Court has to consider the documents produced by the prosecution and on consideration of the same and also the stand of the respondent that the accused persons cause security problem, I am not inclined to grant bail to the petitioner." The learned Judge has not recorded as to what are all the documents and the stand, which were not accepted by the Court.

10. This, in our considered view, is a non-speaking order, which cannot be allowed to sustain. Any Order, which is a non-speaking Order, can be termed as Arbitrary, which is violative of Art.14 as well as Art.21 of the Constitution of India. Under Article 21 of the Constitution of India, the life and liberty of an individual could be deprived of only by following the procedure established by law. The said procedure denotes a fair procedure. Here, in this case, since the impugned order is a non-speaking order, we are inclined to interfere with the same.

11. In the result, the appeal is allowed; the Order of the learned Principal Sessions Judge, Puducherry made in CrI.M.P.No.1471/2016 is hereby set aside and CrI.M.P.No.1471/2016 is remanded back to the Principal Sessions Court, Puducherry for fresh disposal in accordance with law, after affording sufficient opportunity to the parties. The parties are at liberty to produce fresh materials and also raise additional grounds. At any rate, the trial Court shall dispose of the petition within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The learned Principal Sessions Judge, Puducherry.

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

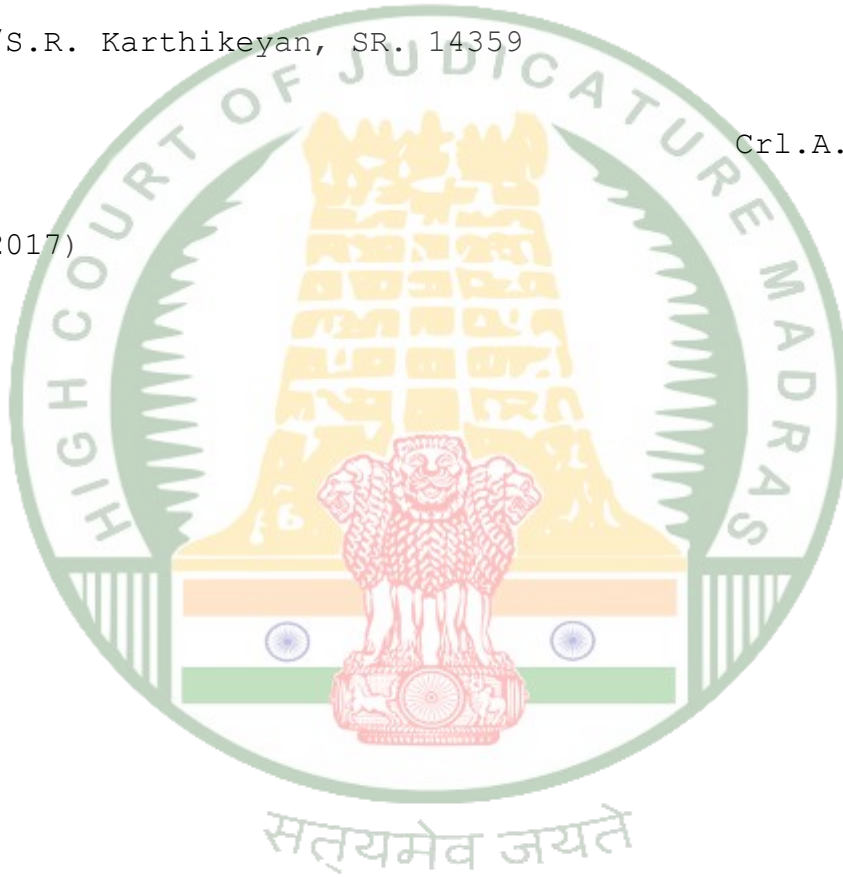
3. The Public Prosecutor, High Court, Chennai

+1cc to M/S.P. Pugalenth, Advocate SR. 14635

+1cc to M/S.R. Karthikeyan, SR. 14359

Judgment in
Cr1.A.No.758/2016

MP (CO)
VR(07/03/2017)



WEB COPY