

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.06.2019

Pronounced on : 26.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.109 of 2019

Tada Aslam

... Appellant/A-19

-Vs-

State represented by,
Additional Superintendent of Police,
SIT, CBCID,
Madurai.

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 21 of the National Investigation Agency Act, 2008, against the order passed by the Special Court under the National Investigation Agency Act 2008 (Special Court for Exclusive trial for Bomb Blast cases) Chennai at Poonamallee, Chennai-56 dismissing the bail application filed by the appellant in CrI.M.P.No.293 of 2018 in C.C.No.7 of 2014 by its order dated 30.08.2018.

For Appellant : Mr.R.Shanmughavelautham,
Senior Counsel for
Mr.T.Vijayaraghavan

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

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J U D G M E N T

[Order of the Court was made by M.M.SUNDRESH, J.]

Appeal arising against the dismissal of bail in CrI.M.P.No.293 of 2018 dated 30.08.2018 in C.C.No.7 of 2014, pending on the file of the Special Court under the National Investigation Agency Act 2008 (Special Court for Exclusive trial for Bomb Blast cases), Poonamallee.

2.The appellant is the 19th accused in the above case. The CBCID, Tirunelveli registered a case in Crime No.1 of 2013 for the offence punishable under Sections 4(i) r/w 4(a) & (b) and 6 of the Explosives Substances Act, 1908, 25 (1-B) (a) of the Arms Act 1959, Section 16, 17 and 18 of the Unlawful Activities (Prevention) Act, 1967, 153(A), 109 r/w 120(b) of IPC.

3.(a).The case of the prosecution is that the accused A1 to A19 are close friends and known to each other. During the month of November 2012 and 09.10.2013, A1 to A19 using Charitable Trust for Minorities (CTM) offices at Melapalayam, Coimbatore, Thirupathur, Salem and other places agreed to cause and conspired together in collecting funds with a view to assist the convicts prisoner detained at Coimbatore for more than 14 years without any remission or commutation and to prevent growth of other religious organizations, which are not agreeing to the principles of Islam and to annihilate the other religious leaders of different organization.

(b) For such purpose unlawfully to do any act, with an intent to cause terror with explosives arms, which are likely to endanger human life and cause serious injury and strike terror in the minds of Hindu people of that locality by using such bombs cause prejudicial to the maintenance of harmony between the different religions community and to cause death of Hindu activists. The common design of the accused to commit offences and for such each one did their best by taking part in different occasions as and when order is received to achieve the common design of conspiracy by abetting each other.

(c) On 27.07.2013, the Inspector of Police, Thirupur North P.S. on duty at SID, CBCID secured some of the accused in this case. A1/Mohamed Thasin in his confession disclosed that Kichan Buhari/A15 handed over a Pistol to witness Mohamed Basheer. Thereafter, on 13.08.2013 he was examined, he disclosed that during the last week of June 2013, Mohamed Basheer had met his friend Sadam Hussain, who was involved in Bangalore BJP office Blast case. At that time, the said Sadam Hussain told him to get the Pistol from one Mohamed Ansar/A8 in Coimbatore, a friend of Maan @ Sulaiman/A18. This instruction was passed on to the accused Mohamed Thasin/A1 by Kichan Buhari/A15, who instructed Mohamed Thasin/A1 to receive the Pistol from Mohamed Basheer. On reaching Coimbatore, he met Mohamed Ansar/A8 and informed the instructions of the accused Maan @ Sulaiman/A18 and Kichan Buhari/A15. Further, Mohamed Ansar/A8 refused to hand over the Pistol and informed that he did not receive any such order. Further, Mohamed Basheer disclosed that the Pistol was in the possession of Mohamed Ansar/A8. On 14.08.2013, Mohamed Ansar/A8 surrendered before the Deputy Superintendent of Police, CBCID, Coimbatore and disclosed about the Pistol and 53 rounds of ammunition, which were handed over to him by Maan @ Sulaiman/A18.

(d) On 14.08.2013, Mohamed Ansar/A8 was arrested and the Pistol, 53 rounds of ammunition and green colour reksin bag were recovered under a cover of seizure mahazar. During the interrogation of the accused Mohamed Ansar/A8, he stated that A18 handed over a Pistol and 53 rounds of ammunition and informed that such Pistol was purchased by one Munna @ Mohamed Rabeek/A9 from Bihar. A18 further informed that on instructions of the appellant, his brother-in-law Saluvudeen @ Ibrahim/A10 deposited a sum of Rs.50,000/- in the Bank account of one Samiullah, who is the brother-in-law of Mohamed Rabeek/A9, who on receipt of money went to Bihar and purchased the above said Pistol and ammunitions and handed over to one Mohamed Nizar/A11 of Coimbatore, as per the instructions of the appellant.

(e) The confession of the 8th accused revealed that the appellant along with A9, A10, A11, A18, were involved in the conspiracy of procurement, transport and possession of illicit weapon i.e Pistol and ammunitions.

(f) Further, some of the accused raised funds in the name of Charitable Trust for Minorities (CTM) in Melapalayam for helping the Muslim prisoners to contest the cases. By using the collected money from CTM, the accused had procured Gel explosives and two electric detonators and explosives gels with the facilitation in active assistance of each other on the common design. Thereafter, the accused were arrested and charge sheet was filed before the learned Judicial Magistrate No.I, Tirunelveli and Non-bailable warrant was issued against the appellant. Since, the appellant was in prison, he was produced through PT warrant on 16.07.2014 and remanded in this case.

4.The contention of the learned counsel for the appellant is that the allegations made in the charge sheet against the appellant is that he instructed his brother-in-law, who is A10 to deposit Rs.50,000/- in the bank account, which was received by A9, who visited Bihar and purchased the Pistol and ammunition and handed over to A11.

5.According to the appellant, this a fictitious story and the appellant has been implicated as A19 on the confession statement given by co-accused without any material. Further submitted that there are totally 19 accused in this case, out of them three accused are in jail and others have been enlarged on bail. In view of their long incarceration in prison, the other accused involved in this case were granted bail. The appellant is also similarly placed.

6.He would further submit that though he was convicted and incarcerated in S.C.No.456 of 2000, as a lifer, the appellant is unable to seek parole, leave and avail other benefits. Hence, the bail may be granted to the appellant. He further submitted

that the lower Court dismissed the bail application of the appellant on the ground that there are ample materials to show the involvement of the appellant in this crime and he was unable to point out the change of circumstance. Without looking into the fact that there is no admissible evidence of material against the appellant, the lower Court dismissed his bail application. Hence, he prays for grant of bail.

7.Per Contra, the learned Additional Public Prosecutor strongly objected to grant bail to the appellant and also filed a counter to make out his submissions that the appellant and other accused have conspired to act against the Nation, Innocent people of the country and to Sovereignty of India. If the respondent Police have not seized the Pistol and 53 rounds of ammunitions and other explosives on time, they would have used the weapons for their illegal activities at many places and caused irreparable loss to the lives of innocent people, causing disharmony between different religions and to the Nation.

8.He would further submit that the appellant is a life convict prisoner and he has involved in the following cases:

"1.Madurai City Karimedu P.S.Cr.No.1861/97
u/s.147, 148, 120(b), 302 IPC r/w 149 IPC.,
[Asst. Jailor Tr.Jayaprakash murder case] -
convicted to life imprisonment by the Hon'ble
FTC-II Court, Madurai on 02.05.2003 in
S.C.No.456/2000.

2.Coimbatore B-12 Ukkadam P.S Cr.No.2205/97
u/s.147, 148, 149, 302, 109 IPC [Police Constable
Selvaraj Murder case] - Convicted to life by FTC
II, CBE on 23.12.2002.

The case was acquitted by the Hon'ble High Court
on 26.02.2003 in C.A.Nos.122/2003 to 124/2003.
Criminal Appeal filed against the petitioner by
the State before the Hon'ble Supreme Court of
India in C.A.No.142-144/2008 is pending.

3.Coimbatore B1 Bazaar PS Cr.No.151/98
[Coimbatore serial bomb blast case] - convicted
for life sentence by Special Court, Coimabatore
on 01.08.2007.
The case was acquitted by the Hon'ble High Court
on 18.12.2009 in C.A.Nos.1017/2007, 1018 and
1034/2007.

Criminal Appeal filed against the petitioner by
victim side before the Hon'ble Supreme Court of
India in C.A.No.2789/2012 to 2792/2012 is
pending.

4.Coimbatore City B3 Kattoor PS Cr.No.1056
of 2010 u/s.147, 148, 365, 342, 384, 506(ii) r/w
120(b) of IPC., [P.T.]."

9.In this case, A8 was arrested on 14.08.2013 and on his confession, the Pistol along with 53 rounds of ammunition were recovered. A10 is the brother-in-law of the appellant and on the instruction of the appellant, A10 has deposited a sum of Rs.50,000/- in the bank of one Samiullah, who is the brother-in-law of A9. Thereafter, A9 had gone to Bihar and purchased Pistol and handed over the same to A11 from whom, the Pistol and ammunitions were recovered and seized. The appellant is a co-conspirator on a larger design to sabotage peace, cause disharmony and threat to the Sovereignty of India.

10.He would further submit that earlier the appellant filed a bail application in Crl.O.P.No.22444 of 2016 and it was dismissed by this Court on 24.11.2016 and the bail petition in Crl.O.P.No.835 of 2017 was dismissed by this Court on 01.02.2017, the bail petition in Crl.O.P.[MD]No.445 of 2018 was dismissed as withdrawn on 07.02.2018 by this Court and the bail petition in Crl.O.P.No.4546 of 2018 was also dismissed on 03.05.2018 by this Court on merits. Further, the appellant in bail application Crl.M.P.No.385 of 2017 was dismissed by the Special Court under the National Investigation Agency Act, 2008, Poonamallee on 08.11.2017 and the bail petition in Crl.M.P.No.293 of 2018 was dismissed by the same Court on 30.08.2018. Further, the discharge petition of the appellant in Crl.M.P.No.116 of 2017 was also dismissed by the Court below on 30.08.2018. Without any change of circumstances, this petition has been filed by the appellant.

11.He further submit that, as per the chapter XXXIII "Provisions as to Bail and Bonds" the appellant is not entitled for any bail as per Section 437(ii) of Cr.P.C is extracted here under:

"(ii) Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a [a cognizable offence punishable with imprisonment for three years or more but not less than seven years]:"

Hence, there is no sufficient reason to entertain the bail petition of the appellant. Therefore, he vehemently opposed to grant bail to the appellant.

12.This Court on perusal of the materials and on analysis of the submissions made by the appellant and the prosecution,

comes to the conclusion that the appellant is a lifer, who has been convicted in S.C.No.456 of 2000 and he is undergoing imprisonment for life. Further, the appellant conspired with other accused has played an active role in promoting enmity between different groups on the grounds of religion. In that design, he has taken part in procurement and conspiracy by illegally procuring the explosives to be used for the purpose of Jihad against particular community and there are sufficient materials by way of statement, confession and recovery in this case. Further, the Forensic Scientific Laboratory has opined that the seized materials is high explosive and the weapons seized is a country made semi-automatic Pistol and the weapons found to be in working condition. Therefore, the question of parity on the available facts and materials is not appreciable to the appellant.

13. Taking into consideration of the antecedents of the appellant and also on the fact that the appellant being a lifer, who has been sentenced to life imprisonment in S.C.No.456 of 2000 and there are enough material against the appellant, this Court is not inclined to grant bail to the appellant.

In the result this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (CS VII)

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Sub Assistant Registrar

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To

1. The Special Court under the
National Investigation Agency Act 2008
(Special Court for Exclusive trial for Bomb Blast cases)
Chennai, Poonamallee, Chennai-56.

2. The Additional Superintendent of Police,
SID, CBCID, Madurai.

3. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.T.Vijayaraghavan, Advocate, S.R.No.52767 & 50020

CrI.A.No.109 of 2019

SAI (CO)

RRS (02/07/2019)