

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2019

Delivered on : 18.02.2019

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRIMINAL APPEAL No.389 OF 2018
and
Crl.M.P.No.9002 of 2018

S.Chandra

.. Appellant/Petitioner/A-29

vs

State represented by

The Deputy Superintendent of Police,
'Q' Branch CID, Dharmapuri District,
Dharmapuri.

(Crime No.1004/02, 1005/02, 1006/02)

of Uthangarai Police station and

Crime No.434/02 of Kallavi Police Station)

.. Respondent/Complainant

Prayer in Crl.A.No.389 of 2018 : Criminal Appeal preferred under Section 34 of the Prevention of Terrorism Act, 2002, against the Judgment and Order dated 12.06.2018 made in Crl.M.P.No.540 of 2017 in Spl.C.C.No.5 of 2003 on the file of the Special Court under POTA, Poonamallee, Chennai.

Prayer in Crl.MP.No.9002 of 2018 : Criminal Miscellaneous Petition filed under Section 439 CrPC to grant interim bail to the petitioner in connection with Spl.C.C.No.5 of 2003 on the file of the Special Court under POTA, Poonamallee, pending disposal of the above Criminal Appeal.

For Appellant/
Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.R.Prathap Kumar,
Additional Public Prosecutor.

J U D G M E N T

M.SATHYANARAYANAN, J.

The appellant is the petitioner in CrI.M.P.No.540 of 2017 in Spl.C.C.No.5 of 2003 on the file of the Special Court under the Prevention of Terrorism Act, 2002 [in short "POTA"] (Special Court for Exclusive Trial of Bomb Blast Cases), Poonamallee, Chennai-56 and she was arrayed as Accused No.29 in the said Sessions Case. The appellant/petitioner/A-29 filed the said miscellaneous petition under Section 227 CrPC to discharge her from the case and vide, impugned order dated 12.06.2018, the said miscellaneous petition came to be dismissed and challenging the legality of the same, she has filed this Criminal Appeal. The appellant, pending disposal of this Criminal Appeal, filed CrI.M.P.No.9002 of 2018 under Section 439 CrPC, praying for interim bail.

2. In the appeal, typed set of documents have been filed containing the impugned order, which would disclose among other things that the appellant/A-29 along with other accused, who are branded as Naxalites assembled in a mango grove in Salajokipatti of Krishnagiri District on 23.11.2002 for the purpose of getting trained in arms. On 24.11.2002, a police team tried to surround them and there was exchange of fire between them, which resulted in the death of one Siva @ Parthipan belonging to the said group and the appellant/petitioner/A-29 managed to escape. The appellant group again assembled at a mango grove in Gurugapatti Village, Kallavi Police Station limit and when the police team tried to apprehend them, there was exchange of fire and one Balan/A-21 was arrested and the other accused had escaped.

3. The case, after investigation, has culminated into a Charge Sheet, which was taken on file as Special C.C.No.5 of 2003 on the file of the said Court and initially, the appellant/petitioner was arrayed as A-31 in the said case and she was shown as absconding accused. As per the Charge Sheet, the appellant/petitioner/A-29 said to have committed the offences under Sections 120-B, 148, 149, 333 and 307 I.P.C. read with Sections 3(2)(b) and 3(5) of POTA. Since the appellant/petitioner and other accused absconded themselves, their cases were split-up and charges were framed against rest of the accused by the Special Court on 26.11.2004, Subsequently, one Poothipatti Ramachandran/A-25, Sundaramurthy/A-26 and Bharathi/A-27 were secured and charges were framed against them. The accused, namely Manivasagam/A-30/brother of the appellant and Reena Joyce Mary/A-28 were absconding and later on, Reena Joyce Mary/A28 was secured. Since the appellant/petitioner absconded herself and could not be secured, the case was split up and she was tried separately

in Spl.C.C.No.1 of 2009.

4. The prosecution took further steps under Section 82 CrPC and despite the order passed requiring the appearance of the appellant/petitioner, she did not appear before the Court concerned and therefore, paper publication was effected and other procedures have been followed and despite that, she did not appear and therefore, vide order dated 18.04.2015, the order of proclamation was passed. The appellant/petitioner/A-29 at last was secured on 16.08.2016, nearly after a lapse of 14 years.

5. The Trial Court, on consideration of the materials placed, found that accusations made against the petitioner/appellant are prima facie true and taking into consideration the case of the prosecution against the petitioner/appellant that she along with other accused had entered into a criminal conspiracy to commit terrorism and that the statement of certain witnesses and confession of co-accused as alleged by the prosecution indicate the involvement of the petitioner in the crime and the points urged can be considered only during the course of trial and therefore, dismissed the petition for discharge, vide impugned order dated 12.06.2018 and aggrieved by the same, the appellant/petitioner has filed this Criminal Appeal.

6. Mr.R.Sankarasubbu, learned counsel appearing for the appellant/petitioner has invited the attention of this Court to the counter affidavit filed by the prosecution/respondent in the Criminal Appeal and would submit that most of the co-accused were enlarged on bail and they are regularly complying with the conditions and also cooperating for the early conclusion of trial and statements of the co-accused/LWs.169 and 170, namely C.Thangaraj and S.Muniraj did not implicate the appellant/petitioner in any way. It is the further submission of the learned counsel appearing for the appellant/petitioner that POTA was repealed by The Prevention of Terrorism (Repeal) Act, 2004 [Act No.26 of 2004] and the functioning of the Review Committee has been saved and her case has not been placed before the Review Committee for consideration and taking into consideration of the fact that the appellant/petitioner is undergoing incarceration for nearly 2 years and odd and that there is no possibility of early conclusion of trial coupled with the fact that the materials placed by the prosecution, even assuming that it can be accepted on its face value, have failed to substantiate the allegation of criminality against the appellant/petitioner and therefore, prays for setting aside the impugned order.

7. The learned counsel appearing for the

appellant/petitioner has also prays for interim bail in the light of his submissions and would further add that this Court, on an earlier occasion, has dismissed CrI.A.No.695 of 2017 filed by the appellant against the dismissal of the bail petition, vide order dated 23.10.2017 made in CrI.M.P.No.360 of 2017 and in the light of the detailed judgment dated 05.12.2017 passed in the said appeal, filing of yet another bail petition before the Trial Court is only an empty formality and therefore, prays for her enlargement on bail by way of interim relief and also assured that in the event of the appellant/petitioner in CrI.M.P.No.9002 of 2018 enlarged on bail, she will not abscond herself and will extend her maximum cooperation for early conclusion of the trial.

8. The learned counsel appearing for the appellant/petitioner, in support of his submissions, placed reliance upon the following judgments:

- (i) Judgment dated 04.08.2005 made in Appeal (CrI.) 373 - 375 of 2004 [State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru] - [AIR 2005 SC 3820 : (2005) 11 SCC 600] famously known as "Parliament Attack Case"
- (ii) Shaheen Welfare Association v. Union of India and Others [(1996) 2 SCC 616]
- (iii) Judgment dated 19.04.2012 made in CrI.A.No.60 of 2012 [Sundaramurthy v. The State, rep. by The Deputy Superintendent of Police, 'Q' Branch, CID, Dharmapuri]
- (iv) Judgment dated 23.09.2014 made in CrI.A.No.377 of 2014 [Ragini @ Bharathi v. State rep. by Deputy Superintendent of Police, 'Q' Branch, CID, Thirupathi Range, Dharmapuri District]
- (v) Vijaykumar Baldev Mishra @ Sharma v. State of Maharashtra [AIR 2008 SC 961]
- (vi) Adambhai Sulemanbhai Ajmeri and Others v. State of Gujarat [(2014) 2 MLJ (CrI.) 670 (SC)].

9. Per contra, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondent/State would submit that the CrI.M.P.No.9002 of 2018 filed for interim bail is not at all maintainable for the reason that the present Criminal Appeal is preferred against the dismissal of the discharge petition and the remedy, if any, open to the appellant/petitioner is to file a fresh bail petition before the Trial Court. The learned Additional Public Prosecutor appearing for the respondent, on the merits of the appeal, would contend that the petitioner had absconded herself for nearly 14 years and odd and the allegations levelled against her are very serious in nature and the confession statements of the co-accused, namely Balan, Duraisingavel and Ramani implicate her and the same has been amply corroborated by other witnesses and apart from the present case, the appellant has been facing prosecution in two other

cases in Krishnapuram Police Station Crime No.122/2014 and Karur 'Q' Branch Crime No.1/2016. The learned Additional Public Prosecutor strongly opposing the plea for bail would contend that the appellant did not have Ration Card, Voter Identity Card, Aadhar Card etc., and during the period of incarceration for nearly 14 years, she actively participated in the activities of the banned terrorist organization, namely CPI (Maoist) at Tri-junction area of Tamil Nadu, Kerala and Karnataka and the appellant/petitioner is the Women Commander of the banned organization, namely Radical Youth League (RYL).

10. The learned Additional Public Prosecutor would further submit that the appellant's husband, who is arrayed as A-26, is also a member of the said organization (RYL) and he was convicted sentenced to undergo 5 terms of Life Imprisonment and 7 years Rigorous Imprisonment with a Fine of Rs.2,000/- by the TADA Court and it has also been confirmed by this Court and the appellant's brother, who is arrayed as A-30, was also arrested on 24.11.2002 and released on bail on 18.05.2007 and after his release on bail, he violated the bail conditions and absconded and after a lapse of 4 years, with great difficulty, he was arrested on 20.02.2012 by 'Q' Branch CID and he was again released on bail on 05.12.2012 and immediately thereafter, he absconded and went underground and continuing his terrorist activities and as such, the prayer for interim bail may not be granted.

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

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12. Let this Court takes up the present Criminal Appeal, which is preferred against the dismissal of the application for discharge.

13. The appellant/petitioner is arrayed as A-29 and her husband, namely Sundaramurthy is arrayed as A-26 and his brother, namely Manivasagam is arrayed as A-30. The allegations made against the accused, prima facie appears to be very serious and it is alleged that they belong to a banned organization.

14. The primordial submission made by the learned counsel appearing for the appellant/petitioner is that statement of two witnesses, namely C.Thangaraj (LW169) and S.Muniraj (LW170) do not implicate the appellant/petitioner with the alleged commission of the offences and despite the averments in the counter affidavit that at least 3 of the co-accused in their confession statements implicated her and in the absence of corroboration in the above cited witnesses on material

particulars and even assuming they support the case of the prosecution through their oral testimonies, still the appellant cannot be convicted.

15. The statement of the said two witnesses (LWs.169 and 170) would disclose that when they came to the police station, five accused, namely Martin Thamizhselvam, Prabhakaran, Murugesan, Duraisingavel and Balan were present and out of them, Duraisingavel and Balan gave confession statements. It is to be noted at this juncture that the confession statement of the co-accused have not been filed in the typed set of documents filed along with this appeal and the petition filed for discharge have also not been filed and only the impugned order alone has been filed.

16. In *Adambhai Sulemenbhai Ajmeri and Others v. State of Gujarat* [(2014) 2 MLJ (Cri) 670 (SC)], recording of the confession statement under POTA as well as the scope of Section 139 of the Indian Evidence Act came up for consideration and in paragraph No.19 of the said decision, the Hon'ble Apex Court has recorded that neither the police officer recording the confessional statements nor the Chief Judicial Magistrate followed the statutory mandates laid down in POTA under Sections 32 and 52 while recording the confession statements of the accused persons and further held that "Courts, before they act on accomplice evidence, insist on corroboration in material respects as to the offence itself and also implicating in some satisfactory way, however small, each accused named by the accomplice. In this way the commission of the offence is confirmed by some competent evidence other than the single or unconfirmed testimony of the accomplice and the inclusion by the accomplice of an innocent person is defeated. This rule of caution or prudence has become so ingrained in the consideration of accomplice evidence as to have almost the standing of a rule of law." The learned counsel appearing for the appellant placed heavy reliance upon the said judgment, in support of his submissions. It is very pertinent to point out at this juncture that the said decision emanates out of the appeal filed by the convicted accused aggrieved by the conviction and sentenced awarded to them by the Trial Court / Special Court for trial of POTA case, as confirmed by the High Court of Gujarat.

17. In the case on hand, insofar as the appellant is concerned, charges are yet to be framed and according to the prosecution, the occurrence took place on 24.11.2002 and she absconded herself for nearly 14 years and was taken into custody on 16.08.2016 and as a result of her abscondance, the case against her was split up and charges are yet to be framed on account of pendency of this Criminal Appeal.

18. Whether the evidence of an accomplice is reliable or not have to be tested and gone into after conclusion of the trial and as already pointed out, charges are yet to be framed in this case and as such, the decision in Adambhai Sulemanbhai case (cited supra) has no application to the case on hand.

19. Reliance placed by the learned counsel appearing for the appellant on the decision in State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru [AIR 2005 SC 3820 : (2005) 11 SCC 600], is of no use for the reason that the said appeal was preferred against the conviction and sentence and the Hon'ble Apex Court had the benefit of going through the testimonies of witnesses and documentary evidences and whereas in the case on hand, the said stage is yet to be reached.

20. In K.Ramakrishna and Others v. State of Bihar and Others [AIR 2000 SC 3330], quashing of criminal proceedings under Section 482 CrPC and discharge under Section 239 CrPC came up for consideration and the Hon'ble Supreme Court, by placing reliance upon the decision in Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : AIR 1999 SC 1216], in paragraph No.4, observed that "The Trial Court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an enquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or shifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed."

21. In State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568], it was held that "at the stage of framing charge roving and fishing inquiry is impermissible and a mini trial cannot be conducted at such stage. At the stage of framing of charge the submissions on behalf of the accused have to be confined to the material produced by the investigating agency."

22. In Onkar Nath Mishra and Others v. State (NCT of Delhi) and Another [(2008) 1 SCC (Cri) 507], the scope of Sections 227, 228, 239, 240 and 245 CrPC came up for consideration and the Hon'ble Apex Court, after placing reliance upon it's earlier decisions in State of Karnataka v. L.Muniswamy [(1977) 2 SCC 699], State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659] and State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338], in paragraph No.11, observed as under:

"11. It is trite that at the stage of framing of charge the Court is required to evaluate the material

and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual legislation constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

23. In *Sajjan Kumar v. Central Bureau of Investigation* [(2010) 9 SCC 368], the Hon'ble Apex Court, has considered the scope of Sections 227 and 228 CrPC as well as the delay in concluding the trial and concluded that framing of charges against the appellant by the Trial Court cannot be said to be bad in law or abuse of process of law or without any material basis. The Hon'ble Apex Court, after placing reliance upon its earlier decision in *Abdul Rehman Antulay v. R.S.Nayak* [(1992) 1 SCC 225], in paragraph No.34 observed that "the principles enunciated in the said decision have to be adhered to, considering the factual position being an extraordinary one, the ultimate decision quashing the criminal proceedings cannot be applied straightaway," which means that vitiation of criminal proceedings on account of delay in trial has to be tested/considered depending upon the facts and circumstances of each case.

24. In *State through the Inspector of Police v. A.Arun Kumar and Another* [(2015) 2 SCC 417], the Hon'ble Apex Court has considered the exercise of revisional jurisdiction against the framing of charge and after taking into consideration the *Sajjan Kumar* case (cited supra), in paragraph No.10 concluded that "the material on record discloses grave suspicion against the respondents and the Special Court was right in framing framing charges against the respondents and therefore, quashed the order of discharge with a direction that the respondents continue to stand charged and must consequently face the trial."

25. This Court, after carefully considering the rival submissions and on scrutiny and analysis of the entire materials, is of the considered view that whether the confession statements of co-accused are amply corroborated by independent witnesses on material particulars, cannot be tested/considered at this stage and the grounds urged in this regard can be

considered, depending upon the evidence to be let in by the prosecution and the defence to be projected on behalf of the accused.

26. The Final Report, which has been taken on file in Spl.C.C.No.5 of 2003 by the Special Court under the POTA would prima facie indicate that the allegations are serious in nature and as such, the plea for discharge cannot be considered. The Trial Court, in paragraph No.8 of the impugned order, has applied the correct legal position and rightly reached the conclusion to dismiss the petition for discharge and this Court finds no error or infirmity in the reasons stated therein and as such, this Criminal Appeal deserves dismissal.

Crl.M.P.No.9002 of 2018

27. The appellant/A-29, pending disposal of this Criminal Appeal, by invoking 439 CrPC had filed the present miscellaneous petition praying for interim bail pending trial of the Sessions Case. This Court, even before commencement of the arguments, had pointed out that the present petition may not be maintainable and however, the learned counsel appearing for the appellant/petitioner insisted that it is the liberty of an individual and she, being a lady, is under incarceration for nearly 2 years and odd coupled with the fact that in the light of the dismissal of Crl.A.No.695 of 2017 on 05.12.2017, any application filed for bail would be dismissed by the Trial Court.

28. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner/appellant would submit that the petitioner's name did not find place in the F.I.R. and nobody knows her name and nobody identified her during the course of investigation and the only material available is the confession statements of the co-accused and said to have been supported by some witnesses and therefore, the probability of getting order of acquittal is very bright. It is the further submission of the learned counsel appearing for the petitioner that most of the co-accused were enlarged on bail and they are regularly complying with the conditions and insofar the long abscondance of the petitioner is concerned, he would submit that since she was not aware of the case, it cannot be said that she deliberately absconded herself for the purpose of delaying/dragging the trial.

29. It is the further submission of the learned counsel appearing for the petitioner that despite POTA having repealed by Act No.26 of 2004, in the light of Section 3 of the Repealing Act, the Review Committee constituted would continue to operate and her case has not even been placed before the Review Committee and as such, there is no material or any other thing available to frame charge against her. The learned counsel

appearing for the petitioner, in support of his submissions, has placed reliance upon the following judgments:

- (i) Judgment dated 19.04.2012 made in CrI.A.No.60 of 2012 [Sundaramurthy v. The State rep. by The Deputy Superintendent of Police 'Q' Branch, CID, Dharmapuri] ;
- (ii) Judgment dated 23.09.2014 made in CrI.A.No.377 of 2014 [Ragini @ Bharathi v. State Rep. by Deputy Superintendent of Police, 'Q' Branch, CID, Thirupathi Range, Dharmapuri District] ;
- (iii) Dilawar v. The State of Harayana and Ors. [AIR 2018 SC 2269]

30. Per contra, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondent/State would contend that admittedly the husband and brother of the petitioner/A-29 are arrayed as A-26 and A-30 respectively and her brother is still absconding and her husband, with great difficulty, was arrested and he has already been convicted and imposed with sentence of 5 terms of Life Imprisonment and other sentences and apart from the present case, the petitioner is also facing two other cases in Krishnapuram Police Station Crime No.122/2014 and Karur 'Q' Branch Crime No.1/16 and as such, she is not entitled to bail. Insofar as the submission that her case has not been placed before the Review Committee is concerned, it is the submission of the learned Additional Public Prosecutor by drawing the attention of this Court to the counter affidavit filed in this appeal that the Review Committee did its exercise and found that a prima facie case has been made out against the accused except one Murugesan/A-2 and the said decision as against A-2 was also put to challenge by filing W.P.Nos.38873 of 2015 and 5386 of 2006 and both the writ petitions are pending and the POTA Review Committee have also considered the records of the petitioner and held that a prima facie case is available under POTA and as such the submission made on behalf of the petitioner is liable to be rejected.

31. It is also pointed out by the learned Additional Public Prosecutor that the petitioner/A-29 is the Women Commander of the banned organization, namely Radical Youth League (RYL) and she is also involved in very many cases and her husband, who is arrayed as A-26, is also a member of the said association and her brother, who is arrayed as A-30 was arrested and enlarged on bail on 18.05.2007 and again absconded for four years and with great difficulty was arrested on 20.02.2012 by 'Q' Branch police and enlarged on bail on 05.12.2012 and ever since, he was absconding and since the petitioner/A-29 has no proof for her permanent residence and taking into consideration of the fact that she was absconding for nearly 14 years, the case was split up against her and therefore, her plea for interim relief may be

rejected by this Court.

32. This Court has considered the rival submissions and also perused the materials placed before it.

33. The petitioner/A-29, on an earlier occasion, has filed Crl.M.P.No.360 of 2017 praying for bail and it was dismissed by the Trial Court on 23.10.2017 and challenging the same, she filed Crl.A.No.695 of 2017. A Division Bench of this Court, in which one of us [M.Sathyanarayanan, J.] was a party, has considered the plea of the petitioner and after considering the various decisions rendered by the Hon'ble Apex Court, also noted that the petitioner herein was absconding for nearly 14 years from 24.11.2002 and was secured only on 21.07.2016 and as such, held that it was not a fit case that the appellant is to be enlarged on bail pending trial.

34. In Crl.A.No.60 of 2012 which dealt with the merits of the dismissal of the bail application filed by A-26, a Division Bench of this Court had taken into consideration the decision of the Hon'ble Apex Court in Shaheen Welfare Association v. Union of India and Others [1996 SCC Crl.366], which dealt with the bail for under trial prisoners in TADA Case and after extracting paragraphs Nos.10 to 13 of the said decision, observed that the contention that the confession of the co-accused is admissible as against the appellant is not acceptable and though the learned Special Public Prosecutor submitted that there is no evidence against the appellant, he is unable to point out such evidence and therefore, they are of the prima facie view that except the confession of the co-accused, there is no material as against the appellant.

35. Crl.A.No.377 of 2014 was preferred by A-27 against the order dismissing her bail petition and a Division Bench of this Court had noted that the allegation against her is not very serious and she seems to have ran away when the police encircled them and therefore, formed an opinion that this is a fit case in which the appellant therein could be enlarged on bail.

36. This Court, while dealing with the Criminal Appeal preferred against the dismissal of the discharge petition, has given reasons as to the sustainability of the said order and also observed that whether the confession of the co-accused are corroborated or supported by material particulars by other witnesses can be gone into only during the course of trial and further pointed out that the confession statement of the co-accused have not been placed before this Court and as such, the above cited decisions have no application to the facts of the present case.

37. In *Dilawar v. The State of Haryana and Others* [AIR 2018 SC 2269], delay in completing the investigation came up for consideration and in paragraph No.7 it was observed that ".....To determine whether undue delay has occurred, one must have regard to nature of offence, number of accused and witnesses, workload of the Court and the investigating agency, systemic delays. Inordinate delay may be taken as presumptive proof of prejudice particularly when Accused is in custody so that prosecution does not become persecution. Court has to balance and weigh several relevant factors. Though it is neither advisable nor feasible to prescribe any mandatory outer time limit and the Court may only examine effect of delay in every individual case on the anvil of Article 21 of the Constitution, there is certainly a need for in-house mechanism to ensure that there is no undue delay in completing investigation....."

38. Facts of the present case would disclose that the petitioner absconded herself for nearly 14 years from 24.11.2002 and was secured only on 16.08.2016 and on account of her abscondance, the case against her was split up and despite her incarceration, charges could not be framed against her on account of filing of petition for discharge in CrI.M.P.No.540 of 2017, which came to be dismissed on 12.06.2018 and on account of pendency of the present Criminal Appeal.

39. Insofar the contention that the case of the petitioner was not placed before the Review Committee is concerned, the counter affidavit filed by the respondent in this appeal reads that that the petitioner's case was also considered by the Review Committee and found to be not fit for review. However, at the same time, it is to be pointed out that the dismissal of the bail application in CrI.M.P.No.360 of 2017 by the Special Court under POTA, as confirmed by this Court in CrI.A.No.695 of 2017 would not constitute res-judicata and on change of circumstances, the application for bail is always maintainable and to be considered.

40. This Court is constrained to go into the bail application, despite it was pointed out by the learned counsel appearing for the petitioner as to the maintainability, as the learned counsel insisted to entertain the said petition and argued the same.

41. As already pointed out, the prayer sought for in the present petition for interim bail, pending disposal of the Sessions Case, is not at all maintainable in the present appeal, which is preferred against the dismissal of the discharge petition. Therefore, CrI.M.P.No.9002 of 2018 also deserves

dismissal. However, if the petitioner is so advised, is always at liberty to file a fresh bail application before the Trial Court, who, upon such filing, may entertain the same, if the papers are otherwise in order and give a disposal in accordance with law.

42. In the result,

(i) Criminal Appeal No.389 of 2018 is dismissed, confirming the order dated 12.06.2018 made in CrI.M.P.No.540 of 2017 in Spl.C.C.No.5 of 2003 on the file of the Special Court under POTA, 2002.

(ii) CrI.M.P.No.9002 of 2018 is dismissed as not maintainable, granting liberty to A-29/petitioner to file a fresh application for bail before the Trial Court, who, upon such filing, may entertain the same, if the papers are otherwise in order and give a disposal in accordance with law.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm
To

1.The Special Court under POTA, 2002
Poonamallee, Chennai-56.

2.The Deputy Superintendent of Police,
'Q' Branch CID, Dharmapuri District,
Dharmapuri.
(Crime No.1004/02, 1005/02, 1006/02)
of Uthangarai Police station and
Crime No.434/02 of Kallavi Police Station)

3.The Public Prosecutor,
Madras High Court, Chennai.

Copy To: The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.R.Sankarasubbu, Advocate Sr.No.14316

Judgment in
Criminal Appeal No.389 of 2018
and CrI.M.P.No.9002 of 2018

PP(CO)
CSL/18.03.2019