

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

Crl.A.Nos. 129 & 133 of 2019

Union of India Rep by its
Deputy Superintendent of Police,
National Investigation Agency,
Kochi, Kerala

... Appellant
in both appeals

-vs-

1.Ismail
2.Samsudeen
3.Salavudeen
4.Jafar Sadiq Ali

... Respondents
in Crl A 129/19

1.Ashiq
2.Shahul Hameed @ Anwar @ Annu

... Respondents
in Crl A 133/19

PRAYER: Appeals filed under Section 21 of National Investigation Act to set aside order of the learned Special Judge for NIA Cases/Special Court for Bomb Blast Cases, Poonamallee in Crl.M.P.Nos 1 & 2 of 2019 in R.C.No. 33/2018/NIA/DLI, dated 22.02.2019 and cancel the bail granted to the respondents herein.

For Appellant in : Mr.R.Karthikeyan
both the appeals : Special Public Prosecutor

For Respondents
in Crl A 129/2019 : Mr.Ezhilarasan
for R1,R3 & R4
Mr.M.Radhakrishnan
for Mr.P.Pugalenthil for R2

For Respondents
in Crl A 133/19 : Mr.M.Radhakrishnan
for Mr.P.Pugalenthil

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

These appeals are preferred against the order of the trial Court, by which the petitions filed for granting of bail have been allowed.

2. The order has been passed by the trial Court on two grounds, namely, the co-accused/A6, who is having similar overt act has been granted bail and the other ground is that the respondents are young and having undergone period of incarceration for quite sometime. Incidentally, the trial Court took note of the fact that the charge sheet has already been filed after completion of the investigation.

3. Mr.R.Karthikeyan, learned Special Public Prosecutor appearing for the appellant made two submissions. The first submission is that there is a marked difference between the application filed seeking cancellation of bail and the appeal filed against the grant of bail. When it comes to the grant of bail, the discretion exercised by the trial Court can be questioned whereas in the application seeking cancellation what is required to be seen is only the supervening circumstances such as tampering of the evidence and the alleged threat to the witnesses. In the case on hand, the trial Court has not gone into scope and ambit of Section 43(D)(5) of the Unlawful Activities (Prevention) Act, 1967. Thus, the appeals will have to be allowed.

4. Mr.Radhakrishnan, learned counsel appearing for some of the respondents would submit that the trial Court did take into consideration the relevant materials. A6 also admittedly stands on the same footing at the relevant point of time and thereafter turned as approver. Even otherwise, law requires the approver to be under incarceration as against the other accused. But in the case on hand, the appellant stated no objection. Therefore, it is not open to the appellant to contend to the contrary. Hence, the trial Court rightly applied the same reasoning and logic applied to the earlier case.

5. Among the co-accused, when once one of them has been granted bail, the same has to be extended to the others which has been rightly done by the trial Court. Therefore, there is no question of application of Section 43(D)(5) of the Act that would arise in the case on hand. Further more, nearly ten months have elapsed after the order passed by the trial Court. There is no serious allegation against the respondents with respect to the subsequent conduct. The trial is about to start after filing

of the charge sheet. Thus, considering the above, these appeals will have to be dismissed.

6. The facts are not in dispute with respect to the similar charges being levelled against A6 who, turned approver subsequently and the respondents herein. Insofar as A6 is concerned, even during the pendency of the application filed seeking to declare him as approver, his bail application was allowed on the no objection given by the appellant. Therefore, we are of the view that it is not open to the appellant to contend to the contrary at this stage. The trial Court did take into consideration the aforesaid fact. We are also of the view that A6 who has turned approver ought not to have been released on bail. We could see that he has been released on bail only on the premise that the appellant has no objection. Therefore, it is not open to the appellant to contend to the contrary. What is applicable to A6 will have to be made applicable to the other accused also. We have already noted that the overt act is common against all the accused.

7. We have to consider one more circumstance in these cases. The respondents have been released by the order of the Court dated 22.02.2019. There is no subsequent serious charge against them. Therefore, we also take into consideration the subsequent conduct of the respondents during the period in which the bail has been granted. We find that the charge sheet has already been filed. The matter is ripe for trial.

8. In such view of the matter, the interest of justice would be secured, if the learned trial Judge is directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

9. With the above direction, these Criminal Appeals stand disposed of.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge for NIA Cases/Special Court
for Bomb Blast Cases, Poonamallee.
2. The Public Prosecutor,
High Court, Madras.
3. The Deputy Superintendent of Police,
National Investigation Agency, Union of India,
Kochi, Kerala

Copy To: The Section Officer, Criminal Section,
High Court of Madras, Chennai -104.

+2cc to Mr.P.Pugalenthir, Advocate Sr.No.97174 & 97175
+2cc to Mr.R.Karthikeyan, Advocate Sr.No. 97021 & 97022

AKM/07.01.2020/4P-9C /

Cr1.A.Nos. 129 & 133 of 2019



WEB COPY