

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fourteenth day of June Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice N. ANAND VENKATESH

CRIMINAL ORIGINAL PETITION No.13809 of 2019

ABDULLA @ ABDUL MUTHALIF @
MANNADI ABDULLAH,

[PETITIONER / ACCUSED]

Vs

STATE REPRESENTED BY [RESPONDENT]
THE ASSISTANT COMMISSIONER OF POLICE,
AMBATTUR RANGE,
AMBATTUR ESTATE POLICE STATION,
CHENNAI - 53.
CR.NO.746 OF 2014.

For Petitioner : M/S.R.SANKARASUBBU Advocate

For Respondent : MR.M.MOHAMED RIYAZ,ADDL.PUBLIC PROSECUTOR

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who was arrested and remanded to judicial custody on 18.06.2014, for an offence u/s 341, 307, 302 and Section 16(1)(a) 17, 18 & 20 of Unlawful Activities [Prevention] Act, 1967, in Crime No.746 of 2014, on the file of the respondent Police seeks bail.

2. The case of the prosecution is that the brother of the de facto complainant was assaulted by three unknown persons with knives on his head, face and neck. The accused persons also caused injuries to one Ravikumar, who runs a Juice Shop. An FIR was registered by the T-2 Ambattur Estate Police Station in Cr.No.746 of 2014. Initially the offences under IPC was incorporated in the FIR and subsequently the provisions of the unlawful Activities [Prevention] Act, 1967 was also invoked on the basis of the materials collected in the course of investigation. The investigation was completed and a Final Report was also filed before the Principal District and Sessions Court, Thiruvallur and the same was taken on file in S.C.No.01 /2015.

3. The case was subsequently transferred to the Special Court under the National Investigation Agency Act and it was assigned with C.C.No.1/2016 and charges were also framed on 20.04.2017. This Court has also passed an order in CrI.O.P.No.6861/2016, directing the trial

Court to proceed with the case on a day to day basis. There are totally 17 accused persons in this case and the present petitioner has been added as A-16.

4. The learned counsel for the petitioner submitted that the name of this petitioner was not found in the FIR. In the course of investigation, the name of this petitioner was added and he was ranked as A-16 and he was shown as an absconding accused in the Final Report. The learned counsel further submitted that this petitioner has been made as an accused person only based on the statement recorded by the Investigating Officer from one Nithyananda Kumar @ Mohamed Beran [LW-67]. The learned counsel submitted that even if the statement of LW-67 is taken as it is, he merely states that this petitioner used to attend the meetings conducted by Muslim Oringinaippu Peravai. It is the further submission of the learned counsel for the petitioner that the petitioner was arrested by showing him as an absconding accused, even without serving any summons to the petitioner. It was submitted that the co accused has been released on bail by this Court and the petitioner has already suffered incarceration for more than 4 1/2 years and the petitioner must be afforded with an opportunity to prepare himself to defend in trial.

5. This Court considered the earlier bail petition filed by this petitioner and dismissed the same by an order dated 25.04.2019, made in CrI.O.P.No.10420 of 2019.

6. This Court dismissed the bail petition after taking into consideration, the previous antecedents of this petitioner.

7. Mr.R.Sankarasubbu, the learned counsel appearing on behalf of the petitioner submitted that there are change in circumstances after dismissal of the earlier bail petition, and this Court while passing the earlier order did not take into consideration certain material facts and also the law laid down by the Hon'ble Supreme Court in **Shaheen Welfare Association .Vs. Union of India and Others** reported in **1996 SCC (CrI) 366**.

8. While substantiating his arguments, the learned counsel submitted that there is absolutely no material against the petitioner in this case except the statement of one Nithyananda Kumar, who has merely stated that the petitioner used to attend the meetings conducted by Muslim Oringinaippu Peravai.

9. The learned counsel further submitted that the earlier conviction that was taken into consideration by this Court in S.C.No.342 of 2002, was not properly appreciated by this Court since this Court has given a finding in the earlier bail order, as if, the petitioner was also involved along with the main accused while throwing country made bomb and opening fire against the escort Police. The learned counsel submitted that this finding is not factually correct. He elaborated his arguments by pointing out to the finding of the trial Court, and the finding of this Court in the

Criminal Appeal, wherein, the petitioner was only convicted for an offence under Section 212 r/w 114 IPC for harbouring A-12 and that the petitioner was nowhere near the scene of occurrence along with the main accused. This order in the Criminal Appeal was subsequently confirmed by the Hon'ble Supreme Court.

10. The learned counsel further submitted that, insofar as the 2nd case pointed out against the petitioner in Cr.No.1591 of 2015, all the accused persons in that case have been granted bail and the case is still under the stage of investigation.

11. The learned counsel submitted that as a subsequent development, this Court considered the bail petitions filed by A1 to A-3 in the present case and granted bail to them by an order dated 22.05.2019. Therefore, the learned counsel submitted that when the main accused have been released on bail, and all the other co-accused have already been released on bail, there is no reason to continue with the incarceration only insofar as the petitioner is concerned.

12. The learned counsel brought to the notice of this Court, the judgment of the Hon'ble Supreme Court in **Shaheen Welfare Association .Vs. Union of India and Others** reported in 1996 SCC (Cr1) 366 & **Kadra Pehadiya and Others .Vs. State of Bihar** reported in 1981 (3) SCC 671.

13. The learned counsel therefore submitted that the petitioner who has already suffered incarceration for nearly 4 1/2 years should not be made to suffer the pre-trial arrest, and the same will be in violation of Article 21 of the Constitution of India.

14. The respondent Police have filed a detailed counter reiterating the earlier stand taken before this Court, and have submitted that there are absolutely no merits in the bail petition and the same has to be dismissed.

15. The learned Additional Public Prosecutor apart from reiterating the stand taken by the respondent in the counter affidavit, submitted that there are no change in circumstances to consider this bail petition, and the petitioner cannot take advantage of the bail granted to the co-accused since he stands on a different footing.

16. This Court has carefully considered the submissions made on either side and also the materials placed on record.

17. Before dealing with the submissions made by the learned counsel for the petitioner, this Court deems it fit to take note of the judgments cited by the learned counsel for the petitioner.

18. The first judgment that was cited by the learned counsel for the petitioner is **Shaheen Welfare Association** referred supra. Even though, this case pertains to an offence under TADA, the Hon'ble Supreme Court has considered all the earlier judgments, wherein, it

took into consideration, cases where the deprivation of personal liberty pending trial becomes unduly long and took note of the fundamental right guaranteed under Article 21 of the Constitution of India. The relevant portions of the judgment is extracted hereunder:

"7. It was on this basis that in the case of Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India & Ors. (1994 (6) SCC 731), this Court considered similar provisions restricting the grant of bail under Narcotic Drugs and Psychotropic Substances Act, 1985 and directed release of undertrials on bail in certain situations and subject to the terms and conditions set out there. The Court while doing so observed, (p.748): "..... we have felt that deprivation of the personal liberty without ensuring speedy trial would also not be in consonance with the right guaranteed by Article 21. Of course, some amount of deprivation of personal liberty cannot be avoided in such cases; but if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt. It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualized by Article 21, which has to be telescoped with the right guaranteed by Article 41 which also promises justness, fairness and reasonableness in procedural matters."

8. It is in this context that it has become necessary to grant some relief to those persons who have been deprived of their personal liberty for a considerable length of time without any Prospect of the trial being concluded in the near future. Undoubtedly, the safety of the community and of the nation needs to be safeguarded looking to the nature of the offences these undertrials have been charged with. But the ultimate justification for such deprivation of liberty pending trial can only be their being found guilty of the offences for which they have been charged. If such a finding is not likely to be arrived at within a reasonable time some relief becomes necessary.

9. The petition thus poses the problem of reconciling conflicting claims of individual liberty versus the right of the community and the nation to safety and protection from terrorism and disruptive activities. While it is essential that innocent people should be protected from terrorists and disruptionists, it is equally necessary that terrorists and disruptionists are speedily tried and

punished. In fact the protection to innocent civilians is dependent on such speedy trial and punishment. The conflict is generated on account of the gross delay in the trial of such persons. This delay may contribute to absence of proper evidence at the trial so that the really guilty may have to be ultimately acquitted. It also causes irreparable damage to innocent persons who may have been wrongly accused of the crime and are ultimately acquitted, but who remain in jail for a long period pending trial because of the stringent provisions regarding bail under TADA. They suffer severe hardship and their families may be ruined.

10. Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh's case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21.

11. These competing claims can be reconciled by taking a pragmatic approach.

12. The proper course is to identify from the nature of the role played by each accused person the real hardcore terrorists or criminals from others who do not belong to that category; and apply the bail provisions strictly in so far as the former class is conceived and liberally in respect of the latter class. This will release the pressure on the courts in the matter of priority for trial. Once the total number of prisoners in jail shrinks, those belonging to the former class and, therefore, kept in jail can be tried on a priority basis. That would help ensure that the evidence against them does not fade away on account of delay. Delay may otherwise harm the prosecution case and the harsh bail provisions may prove counter-productive. A pragmatic approach alone can save the situation for, otherwise, one may find that many of the undertrials may be found to have completed the maximum punishment provided by law by being in jail without a trial. Even in cases where a large number of persons are tied up with the aid of Sections 120B or 147, I.P.C., the role of each person can certainly be evaluated for the purpose of bail and those whose role is not so serious or menacing can be more liberally considered. With inadequate number of courts, the only pragmatic way is to reduce

the prison population of TADA detentes and then deal with hardcore undertrials on priority basis before the evidence fades away or is lost. Such an approach will take care of both the competing interests. This is the approach which we recommend to courts dealing with TADA cases so that the real culprits are promptly tried and punished.

13. For the purpose of grant of bail to TADA detentes, we divide the undertrials into three classes, namely, (a) hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular; (b) other undertrials whose overt acts or involvement directly attract Sections 3 and/or 4 of the TADA Act; (c) undertrials who are roped in, not because of any activity directly attracting Sections 3 and A, but by virtue of Sections 120B or 147, I.P.C., and; (d) those undertrials who were found possessing Incriminating articles in notified areas and are booked under Section 5 of TADA.

14. Ordinarily, it is true that the provisions of Sections 20(8) and 20(9) of TADA would apply to all the aforesaid classes. But while adopting a pragmatic and just approach, no one can dispute the fact that all of them cannot be dealt with by the same yardstick. Different approaches would be justified on the basis of the gravity or the charges. Adopting this approach we are of the opinion that undertrials falling within group (a) cannot receive liberal treatment. Cases of undertrials falling in group (b) would have to be differently dealt with. In that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant, the family members of the complainant, or witnesses. Cases of undertrials falling in groups (c) and (d) can be dealt with leniently and they can be released if they have been in jail for three years and two years respectively. Those falling in group (b) when released on bail may be released on bail of not less than Rs.50,000/- with one surety for like amount and those falling in groups (c) and (d) may be released on bail on their executing a bond for Rs.30,000/- with one surety for like amount subject to the following terms:

<https://hcservices.ecourts.gov.in/hcservices/> 17. The accused shall report to the police

station once a week;

(2) the accused shall remain within the area of jurisdiction of the Designated Court pending trial and shall not leave the area without the permission of the Designated Court;

(3) the accused shall deposit his passport, if any with the Designated Court. If he does not hold a passport he shall file an affidavit to that effect before the Designated Court. The Designated Court may ascertain the correct position from the passport authorities if it deems it necessary;

(4) The Designated Court will be at liberty to cancel the bail if any of these conditions is violated or a case for cancellation of bail is otherwise made out.

(5) Before granting bail a notice shall be given The public prosecutor and an opportunity shall be given to him to oppose the application or such release. The Designated Court may refuse bail in-very special circumstances for reasons to be recorded in writing.

19. A careful reading of the above judgment shows that Courts while dealing with bail petition must necessarily take into consideration, the fact that some relief has to be given to those persons who have been deprived of their personal liberty for a considerable length of time. The ultimate justification of deprivation of such liberty pending trial can only be their being found guilty of the offences for which they have been charged. It is to be borne in mind that the Hon'ble Supreme Court was considering a case of accused persons charged with terrorist activities punishable under TADA.

20. In order to strike a balance, the Hon'ble Supreme Court divided the under trials into four classes viz; (a) Hardcore under trials (b) other under trials (c) under trials who have been roped in by virtue of Section 120-B or 147 IPC and (d) under trials who are found possessing incriminating articles. With this classification, the Hon'ble Supreme Court held that for all those under trials falling under "c" and "d", bail can be granted to the accused persons if they have suffered incarceration for two or three years.

21. Even though, the above guidelines were given by taking note of the provisions of TADA, it gives a fair idea to the Court to deal with cases like the one in hand.

22. As rightly submitted by Mr.R.Sankarasubbu, learned counsel for the petitioner, this Court erred in giving a finding that the petitioner took active participation in the crime in which he was

convicted. This Court failed to note that the petitioner was convicted only for an offence under Section 212 r/2 114 IPC for harbouring A-12. Even in this case, the petitioner is sought to be roped in as an accused on the ground that he used to attend the meetings conducted by Muslim Oringinaippu Peravai, and therefore, he was also a part of the conspiracy. This Court failed to take note of this material fact.

23. It is also brought to the notice of this Court that all the accused persons have been granted bail in Cr.No.1591 of 2015, which is also pending investigation.

24. Taking cue from the judgment of the Hon'ble Supreme Court referred supra, the petitioner does not fall in the category of a hardcore under trial and he only falls within category "C" mentioned above.

25. It is also important to take note of the judgment of the Hon'ble Supreme Court in **Kadra Pehadiya and Others** referred supra, wherein, it was held that no one shall be allowed to be confined to jail for more than a reasonable period of time, which should not normally exceed one year, as an under trial prisoner facing Sessions trial.

26. This Court must also take note of the fact that the main accused persons viz; A-1 to A-3 were subsequently granted bail by this Court in Crl.O.P.Nos.12325 -- etc., of 2019 by order dated 22.05.2019. All the co-accused have been granted bail by this Court, except the petitioner and the petitioner has already suffered incarceration for nearly 4 1/2 years.

27. This Court while passing the earlier order did not take note of certain material facts. It is also seen that A-1 to A-3 have been granted bail by this Court by an order dated 22.05.2019. In the considered view of this Court, continuing the incarceration of the petitioner who is an under trial prisoner any longer will affect his right of liberty guaranteed under Article 21 of the Constitution of India. The petitioner must be given a fair opportunity to defend himself in the trial. This Court has also fixed a time limit for the completion of the trial.

28. In the facts and circumstances of the case, and in view of the above discussion, this Court is inclined to grant bail to the petitioner subject to the following conditions:

29. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, both sureties shall be a blood relative, each for a like sum to the satisfaction of the learned Principal Sessions Judge/Special Court, Thiruvallur, and on further conditions that:-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall appear before the Principal and District Sessions Judge, Thiruvallur police daily at 10.30 am, and report before the respondent Police daily at 05.30 p.m., until further orders.

[c] the direction given by this Court for the disposal of the case in S.C.No.1 of 2015 in Crl.O.P.Nos.9203, 9212 and 9646 of 2019, shall be strictly complied with.

[d] if the petitioner adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody as per the judgment of the Hon'ble Supreme Court in **State Of Uttar Pradesh .Vs. Shambhu Nath Singh (JT 2001 (4) SC 3191)**.

[e] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[f] the petitioner shall not abscond either during investigation or trial.

[g] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[h] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

-sd/-

14/06/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

सत्यमेव जयते
Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

WEB COPY

TO

1 THE SPECIAL COURT
PRINCIPAL SESSIONS JUDGE,
THIRUVALLUR

2 THE PRINCIPAL AND DISTRICT
SESSIONS JUDGE, THIRUVALLUR

3 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR[FOR INFORMATION]

4 THE ASSISITANT COMMISSIONER OF POLICE.
AMBATTUR RANGE,
AMBATTUR ESTATE POLICE STATION,
CHENNAI-53

5 THE SUPERINTENDENT,
CENTRAL PRISON,VELLORE

6 THE ADDITIONAL PUBLIC
PROSECUTOR,HIGH COURT,MADRAS

7 THE ASSISTANT COMMISSIONER OF POLICE,
AMBATTUR RANGE,
AMBATTUR ESTATE POLICE STATION,
CHENNAI - 53.

+1CC to M/S.R.SANKARASUBBU Advocate on payment of necessary
charges SR.NO. 11565

CRL OP.13809/2019

Date :14/06/2019

RD 14/06/2019



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