

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.08.2019
Pronounced on : 06.09.2019

CORAM:

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

Criminal Appeal No.423 of 2019

Mohammed Ibrahim ... Appellant/A9

-Vs-

Union of India,
represented by,
The Additional Superintendent of Police,
National Investigation Agency,
Kochi. ... Respondent

PRAYER: Criminal Appeal filed under Section 21 of the NIA Act, 2008, to set aside the impugned order passed by the learned Special Judge to NIA cases and Sessions Court for Exclusive Trial of Bomb Blast Cases at Poonammallee, Chennai in impugned Bail order in CrI.M.P.No.217 of 2019 dated 24.06.2019 and may please to enlarge the appellants on bail in R.C.No.06/2019/NIA/DLI dated 07.03.2019, pending investigation before the respondent.

For Appellant : Mr.M.Ajmal Khan,
Senior Counsel for
M/s.A.Raja Mohamed

For Respondent : Mr.R.Karthikeyan
Special Public Prosecutor

JUDGMENT

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

This Criminal Appeal has been filed by the 9th accused in CrI.M.P.No.217 of 2019 in R.C.No.06/2019/NIA/DLI, which came to be dismissed by the learned Sessions Judge for Exclusive Trial of Bomb Blast Cases, Poonammallee by its order dated 24.06.2019.

2.The case of the prosecution is that on 05.02.2019 the deceased Ramalingam raised objections against the Dawah work as poor and back-trodden people were forced to convert Islam. The deceased took offensive of the conversion programme of the accused. During the protest and altercation, the deceased removed the skullcap of one of the muslim in Dawah programme and worn by him and applied sacred ashes on the forehead of the muslim and recorded the same in his mobile and uploaded in the social media. Thereby the deceased exhibited his protest by defending the rights of the Hindus. Irked by the protest against their Dawah work and subsequent altercation with the deceased, A1 to A5, A17 & A18 along with other accused belonging to Popular Front of India (PFI) and its political organisation Social Democratic Party of India (SDPI) had conspired to wage Jihad against the deceased, who is a non-Muslim.

3.At about 08.30 p.m, A1 to A5, A17 & A18 conspired with each other near Periyapalli/Mosque at Thirubuvanam in person and over phone to commit the crime so as to create terror in the minds of the particular section of people as well as general public. In pursuant to the conspiracy, A1 to A8, A11 & A13 had joined together at Periyapalli/Mosque at about 11.00 a.m. A12, A15 to A18 had conspired at PFI Office, Kumbakonam at about 11.30 a.m. In furtherance to the conspiracy at about 12.30 p.m., A1, A5 to A8, A11 to A16 again assembled near Periyapalli Mosque. Later, A6 to A8, A11 to A16 planned to murder the deceased at about 01.30 p.m at the residence of A11. In pursuant to which, A11, A12 and A16 deputed A6 and A7 to carry out reconnaissance in their motorcycles bearing numbers TN 68 H 9786-Yamaha FZS and TN 68 E 9354-Hero Splendor Pro respectively. Maruti Swift Dzire Car bearing registration number TN 48 L 1280 was provided by A9 to the assailants/A8, A13, A14 and A15, who had collected weapons viz., Matchet (big knife), big hook (Aruval), Chilly powder and waited to attack the deceased. Thereby the accused persons A1 to A18 had constituted themselves formed a terrorist gang with an intention of attacking the deceased and creating terror in the minds of a section of people.

4.As early planned, A6 and A7 informed about the locations and movements of the deceased to the assailants A8 and A13 to A15, who travelled in Maruti Swift Dzire Car and intercepted the deceased, who was coming in his vehicle (Mini-lorry) at New Muslim Street at about 11.15 p.m. All the four accused got down from the Swife Dzire Car with big knife/Machet and bill hook (Aruval), questioned the deceased about the altercation with PFI Dawah team in the morning and abused the deceased with obscene

language. When A8 tried to remove the key of the deceased vehicle, the deceased was caught hold by A8. The deceased is said to have stated that he already spoken about the problem to one Rasudeen, and he would speak next day morning. At that time, A8 stated that "if we leave you, you will indulge in similar activities". Then, A8 took Chilly Powder, threw on the face of the deceased, who screamed and tried to open the door of the Mini-lorry using his left hand. At that time with the intention to kill the deceased, A13 and A15 caught hold of the right hand of the deceased and A8 inflicted heavy cut injury on the right elbow by using big knife and again he inflicted another cut injury on his left palm. Thereby, the deceased sustained deep injuries in tissues, muscles, vessels, nerves and bone.

5.The accused pulled out the deceased from the vehicle, surrounded and attacked him with deadly weapons in order to kill him. At that time, A13 shouted and said that "don't leave him, kill him". Immediately, A14 inflicted a blow on the deceased by using a bill hook. The deceased blocked the attack with his left hand and he sustained cut injury on his left palm. On seeing a vehicle entering into the Muslim street, the assailants escaped from the scene in their car. The deep injuries caused the death of the deceased at about 12.48 p.m on 06.02.2019. Thereby the accused committed the terrorist act of lethally attacking and killing the deceased, with the intention of striking terror amongst a section of people. A10 in this case had harboured the assailants and reconnaissance accused at Karaikal in furtherance to the conspiracy.

6.The son of the deceased Shiyam Sundar lodged a complaint before Thiruvidadaimarudur Police Station, Thanjavur, which was registered in Crime No.17 of 2019 for the offences under Sections 341, 294(b) and 307 of IPC on 06.02.2019 by the Sub Inspector of Police against four identifiable known persons, F.I.R in Crime No.17 of 2019 was sent to the learned Judicial Magistrate No.I, Kumbakonam. The medical officer of Thanjavur Medical College Hospital declared the deceased was brought dead. Thereafter the Sub Inspector of Police altered the Section 302 of IPC. The Inspector of Police, Thiruvidadaimarudur Police Station took up the investigation, conducted inquest, prepared observation mahazar, rough sketch in the scene of crime.

7.During the course of investigation based on the statements of the witnesses and considering the after effects of the crime as well as the terror intention created by the accused and the consequent impact of the incident on the minds of the particular section of the people, on 06.02.2019 the Inspector of Police

filed an alteration report before the concerned Court to incorporate Section 15 r/w 16, 18, 18(b), 19 and 20 of the Unlawful Activities (Prevention) Act, 1967 and handed over the investigation to the Deputy Superintendent of Police (Law and Order), Thanjavur.

8. During the course of investigation the Deputy Superintendent of Police, Thanjavur arrested A1 to A5 on 06.02.2019, A6 to A8 on 09.02.2019, A9 and A10 on 10.02.2019 and 12.02.2019 respectively. All of them were produced before the concerned Court and remanded to Judicial custody.

9. Considering the gravity of the offence and other factors involved in this case, the Government of India, Ministry of Home Affairs, CTCR Division, North Block, New Delhi vide order No.11011/08/2019/NIA dated 05.03.2019 as per provisions of Sub-Section (4) of Section 6 r/w Section 8 of the NIA Act, 2008 entrusted the investigation to the National Investigation Agency. Accordingly, the National Investigation Agency registered the case as RC-06/2019/NIA/DLI under Sections 341, 294(b), 307, 120(b), 143, 147, 148 & 302 r/w 149 of IPC besides Sections 15 r/w 16, 18, 18(b), 19 & 20 of Unlawful Activities (Prevention) Act, 1967 on 07.03.2019. The entire case was submitted before the NIA Special Court, Poonamallee, Chennai. Thereafter, the investigation of this case was completely taken over from the Tamil Nadu Police on 25.04.2019. Thereafter A17 and A18 were arrested by the National Investigation Agency on 10.05.2019 and 26.06.2019 respectively. A11 to A16 along with other unidentified accused have been absconding ever since the incident.

10. The assailants in this case are A8 and A13 to A15. On the strength of warrant issued by the learned Sessions Judge for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee, the National Investigation Agency searched the accused at various places, including their house on 02.05.2019 and seized the incriminating materials/documents related to this case. All the seized documents and the material objects were produced before the Special Court along with search lists. The seized digital devices had been forwarded to CDAC, Thiruvananthapuram for analysis. The mirror images of the seized digital devices were obtained from CDAC, Thiruvananthapuram and on scrutiny it is found that the accused were in close association among themselves for the crime, as well as with PFI and SDPI is established.

11. The National Investigation Agency conducted the investigation and took up 11 accused persons viz., A1 to A10 and

A17 into police custody for further investigation. On investigation it reveals that A1 to A5 were present at Pakku Vinayakam Thoppu, Village along with A17 and A18 and had hatched criminal conspiracy at Pakku Vinayakan Thoppu just after the verbal altercation took place between the deceased and the Dawah workers. They had also participated along with other accused in conspiracy meeting that took place near Periyapalli/Mosque Thirubhuvanam and other places after the altercation. In furtherance to the criminal conspiracy, the assailants and the conspirators had collected vehicles, weapons, chilly powder, arranged hideouts etc and they planned and decided to commit the terrorist act as part of doing jihad by chopping the hand of the deceased and thereby murdering him, acting themselves as a terrorist gang.

12.The learned counsel for the appellant would submit that the order of the trial Court is nothing but mere reproductive version of the prosecution as well as the appellants. It is clear that the trial Court has failed to state the reason as to how the Court is satisfied with the prosecution case and failed to provide justification of the impugned order independently, wherein the trial Court stated that "the alleged murder is the part of one group belonging to one religion in order to wreck vengeance and in order to create fear in the minds of the people of some other religion, thus inviting serious concern over the safety and security of the country" without any material and it had travel beyond the scope of the Unlawful Activities (Prevention) Act, 1967, since the object and reason of the Act is not fulfilled in both facts and law, there is no prima facie case made out against the appellants.

13.The learned counsel for the appellant would submit that the trial Court has failed to determine whether the accusations made against the appellant are inherently probable and or wholly believable as prima facie true. The trial court without exercising to determinate the prima facie establishment itself, merely on assumption has dismissed the bail application of the appellant. The appellant was arrested on 10.02.2019 and he was very much available in the same town. After the occurrence on 05.02.2019 the appellant on receipt of summons from the respondent appeared before him for enquiry, where he was shown arrested and remanded. The only allegation against the appellant is that the appellant's Maruti Swift Dzire Car was used by the assailants during the occurrence. When the respondent searched the house of the appellant, he has not recovered or seized any banned or objectional materials. The learned counsel for the appellants would further submit that the appellants have been in incarceration for more than 207 days.

14.It is an admitted case that the appellant was not present in the scene of occurrence. Further as per the case of the respondent itself there was five meetings of conspiracy held between 08.30 a.m and 01.30 p.m on 05.02.2019. In none of those meetings, the appellant was present and participated. Further there is no evidence to show that with the knowledge and concurrence of the appellant, the said car was used in the occurrence. The appellant associated is with PFI/SDPI along with other accused, therefore he has been falsely implicated in this case. Hence prayed for bail to the appellant.

15.The learned counsel for the appellant relied upon the following Judgment as follows:-

1.Bonkya Alias Shivaji Mane and others Versus State of Maharashtra reported in (1995) 6 SCC 447. The relevant portion of the Judgment is extracted here under:-

"Thus, keeping in view the background in which the occurrence took place, namely, the altercation at the video parlour, which has a great relevance to determine the applicability of Section 3 TADA, we are of the opinion that the finding of the Designated Court that the appellants have committed an offence punishable under Section 3 TADA is clearly erroneous. In fairness to the learned counsel for the State Mr. Madhav Reddy, Sr. advocate, we must also record that he conceded that in the facts and circumstances of the case and keeping in view the law laid down by the Constitution Bench in Kartar Singh's case [1994 (supp) Scale 1] and Hitendra Vishnu Thakur's case (supra) no offence under Section 3 of TADA could be said to have been committed by the appellants. The conviction and sentence of the appellants for the offence under Section 3 TADA cannot therefore, be sustained and is hereby set aside."

2.Ravindra Shantaram Sawant Versus State of Maharashtra reported in (2002) 5 SCC 604.

"It is no doubt true that even though the crime committed by a "terrorist" and an ordinary criminal would be overlapping to an extent, it is not the intention of the legislature that every criminal should be tried under TADA, when the fall out of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. The provision of the Act need not be resorted to if the nature of the activities of the accused can be checked and controlled under the ordinary law of

the land. It is only in those cases where the law enforcing machinery finds the ordinary law to be inadequate or not sufficiently effective for tackling the menace of terrorism and disruptive activities that resort should be had to the drastic provisions of the Act. Some difficulties, however, arise when the intended activity of the offender results in striking terror or creating fear and panic amongst the people in general or a section thereof. It is in this situation that the Courts have to be cautious to draw a line between the crime punishable under the ordinary criminal law and the ones which are punishable under Section 3 (1) of TADA. (See *Hintendra Vishnu Thakur vs. State of Maharashtra and Others* (1994) 4 SCC 602; *Niranjan Singh Karam Singh Punjabi, Advocate vs. Jitendra Bhimraj Bijjaya and Others* : (1998) 4 SCC 76)."

3.R.R.Gopal @ Nakkheran Gopal Versus the Secretary Home Department Government of Tamil Nadu and the Deputy Superintendent of Police reported in MANU/TN/0827/2008.

"16. Under Section 1, the Act extends to whole of India. Under Section 1(6), the Act is deemed to have come into force on the 24th day of October, 2001 and shall remain in force for a period of three years from the date of its commencement. Chapter II of the Act deals with the punishment for, and measures for dealing with, terrorist activities. Sections 3, 4 and 5 provide for punishment in respect of different offences. Section 3(1) describes what is a terrorist act in these terms Sections :- ?.

Punishment for terrorist acts.-

(1) Whoever, -

(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does not any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any

supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or cause significant damage to any property, commits a terrorist act."

16. Per Contra, the learned Special Public Prosecutor appearing on behalf of the respondent would submit that the appellant confessed about his involvement in the crime. The vehicle of the appellant used in the crime is not in dispute. Based on the arrest and confession of the appellant, the car parked in Periyasamy Car and Two wheeler parking stand, Trichy was disclosed and seized. On examination of the Maruti Swift Dzire Car used by the assailants, the scientific experts recovered blood stains, iron rod, knives from the car. The finger print found in the car used by the accused was also lifted by the the scientific experts and it was sent for forensic analysis and DNA test. The forensic report proved the fact that the blood stains found in the seat of the car and in the weapons and on the body of the deceased are matched, which would go to show that the car of the appellant has been used for commission of offence. Hence, the appellant has committed the offence under Section 18 and presumption is against the appellant is under Section 43(e) of the Unlawful Activities (Prevention) Act, apart from other witnesses. Hence, he strongly opposed to grant bail to the petitioners.

17. Considering the rival submissions and on perusal of the materials which was produced by the respondent in a sealed cover, this Court finds that the categorical assertion of the appellant is that he has been falsely implicated for obvious

reasons. The petitioner is not a member in any of the conspiracy meetings which is admitted by the respondent. There is no materials to show that the appellant had knowingly allowed his car in usage for the furtherance of the other accused. The appellant was being an Office bearer of Popular Front of India and its political organisation Social Democratic Party of India, has been falsely implicated in this case. Further the said association is not a banned association. It is a democratic association to safeguard the interest of the minorities. The appellant was very much available in the town, after the occurrence he voluntarily appeared before the respondent on 10.02.2019 on receipt of the summons.

18.The learned Special Public Prosecutor has produced the materials such as confession statement of the appellant, statement of witnesses, reports of the Forensic Officers, arrest and recovery of the appellant, car parking yard details, the witnesses in whose presence the data was downloaded from the G-mail account and Facebook Account, the Call Detail Record of mobile number of the appellant, arrest memo of the appellant, Seizure Mahazar of the car, ledger maintained at the parking yard and DNA report. From the materials it is seen that, on 06.02.2019 the car was taken by A15 and parked in Periyasamy Car & Two wheeler parking stand, Trichy at about 01.10 a.m and gave mobile number of A16 for reference. In Call Details Record of mobile number of the appellant, it is seen that A12 has received a call and he called the appellant on 05.02.2019 at about 06.37 a.m and 08.21 p.m. The appellant was in contact with other accused.

19.The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a manner of course. Though at the state of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was bring granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail, they are:-

- i) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- ii) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- iii) Prima facie satisfaction of the Court in support of the charge.

20. On 10.02.2019 the appellant appeared before the respondent and he was shown arrested at about 04.00 p.m and given a confession and thereafter he identified the place, where the car was parked by A15. The witness in the Periyasamy Car and Two wheeler parking stand, Trichy has stated that on 06.02.2019 at about 01.10 a.m, A15 parked the car. On examination of the car the blood stains found in the vehicle and the weapons found in the vehicle were seized and sent to Forensic study. The DNA is in conformity with blood stains found in the car and weapons is as that of the deceased. Further it is an admitted case that the appellant has never involved in the conspiracy meetings said to have taken place on five occasions through out the day on 05.02.2019. On 10.02.2019 he appeared before the respondent on receipt of the summons. Now the only material against the appellant is that the disclosure of the parking of car.

21. According to the prosecution, the appellant gave a confession at about 04.00 p.m. Pursuant to which he was taken to Periyasamy Car and two wheeler parking stand, Palakarai, Trichy at about 07.30 p.m, wherein he identified the vehicle. Thereafter the car and the weapons used by the accused were seized under the Mahazars. From the arrest memo dated 10.02.2019, it has been mentioned about the arrest of the appellant and recovery of the car and other articles seized, which is improbable and creates doubt.

22. In view of the above discussions, this Court finds that the appellant has made out a prima facie case for release on bail and we deem it appropriate to enlarge the appellant on bail, subject to the following conditions:

i) On his furnishing personal security in the sum of Rs.1 (one) lakh with two solvent sureties, each of the like amount, to the satisfaction of the trial Court.

ii) The appellant herein shall appear in Court as and when directed by the Court.

iii) The appellant herein shall make himself available for any further investigation/interrogation by NIA as and when required.

iv) The appellant herein shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade that person from disclosing such facts to the Court or to the investigating agency or to any police office.

v) The appellant herein shall not leave India without the

previous permission of the trial Court.

vi) In case the appellant herein is in possession of a passport, the same shall be deposited with the trial Court before being released on bail.

vii) We reserve liberty to the respondent to make an appropriate application for modification/recalling the order passed by us, if for any reason, the appellant herein violates any of the conditions imposed by this Court.

23. It is further made clear that the grant of bail to the appellant herein shall be no consideration for grant of bail to other accused persons in the case and the prayer for bail by other accused persons shall be considered on its own merits. We also make it clear that the Special Court shall decide the bail applications, if filed by the other accused persons, uninfluenced by any observation made by this Court. Further, any observations made by us in this order shall not come in the way of deciding the trial on merits.

24. In view of the above, we set aside the order passed by the trial Court dated 24.06.2019 in CrI.M.P.No.217 of 2019 and grant bail to the appellant herein on the conditions mentioned above. The appeal is allowed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonammallee.
2. The Additional Superintendent of Police, National Investigation Agency, Kochi.
3. The Special Public Prosecutor, High Court, Madras.
4. The Judicial Magistrate, Kumbakonam,
5. -do- Thro The Chief Judicial Magistrate, Kumbakonam, Thanjavour

11/12

6.The Sub Jail,
Poonamallee, Chennai-56

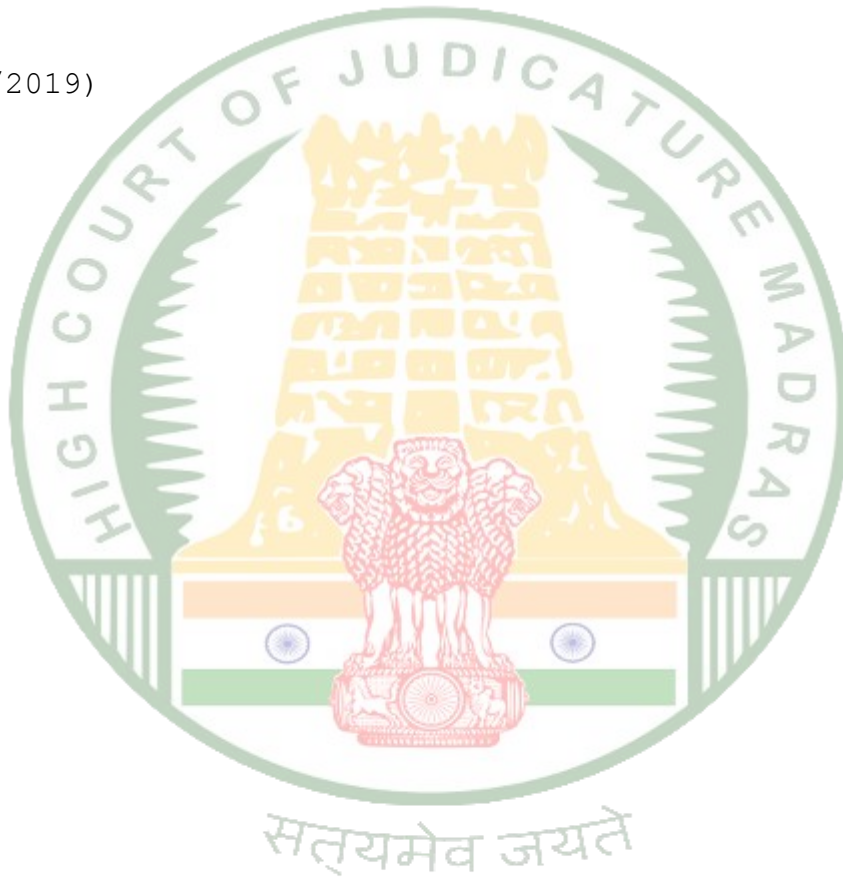
7.The Principal Sessions Judge,
Thanjavour.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.77304

+3cc to Mr.Raja Mohamed, Advocate, S.R.No.77203

Criminal Appeal No.423 of 2019

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