

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.857 of 2018

Mohamed Salin

... Appellant/A-16

-Vs-

State represented by,
Additional Superintendent of Police,
SID, CB CID,
Madurai.
(Crime No.1/2013 of CB CID, Tirunelveli).

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 21 of the National Investigation Agency Act, 2008, to call for the records and to set aside the order of dismissal dated 3.9.2018 in CrI.M.P.No.321 of 2018 in C.C.No.7 of 2014 in the file of the learned the Special Court under the National Investigation Agency Act 2008, Sessions Court for Exclusive trial of Bomb Blast cases, Chennai at Poonamallee, Chennai.

For Appellant : Mr.R.Vivekananthan

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

सत्यमेव जयते

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.321 of 2018, dated 03.09.2018 in C.C.No.7 of 2014, pending on the file of the Special Court under the National Investigation Agency Act 2008, Sessions Court for Exclusive trial of Bomb Blast cases, Poonamallee.

2.The appellant is 16th 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 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 the Mohamed Thasin 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 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 by Maan @ Sulaiman/A18.

(d) On 28.07.2013, A1 to A5 were arrested and remanded to Judicial custody before the learned Judicial Magistrate No.I, Tirunelveli. During custodial interrogation of A1 Mohamed Thasin, from his disclosure statement it is seen that 40 kgs of explosives were given by Paravai Badhusah/A14 of which 10 kgs each were handed over to Kichan Buhari/A15 in Coimbatore through Sahul Hameed @ Katta Sahul/A2 and Bilal Hussain/A6. Further, A15 informed that 43 kgs of explosives were given to one Fakrudeen and a Pistol was given to one Basheer of Coimbatore and he advised A1 to receive the Pistol from Basheer. He further confessed that Paravai Badhusah/A14 was in the safe hands of one Jaffer A17 of Royapuram. During the custodial interrogation of the accused Sahul Hameed @ Katta Shahul/A2, he confessed, that he went to Coimbatore for handing over 10 kgs of explosives to Kichan Buhari/A15 during the first week of January 2013. As regards this appellant/A16, he handed over explosives to Kichan Buhari/A15 in Coimbatore.

(e) Further on going through the confession of Bilal Hussain/A6, he was arrested on 06.08.2013 for his involvement in the conspiracy, possession and transport of explosives. He further confessed that on instruction of Sahul Hameed @ Katta Shahul/A2, he received 12 kgs of explosives from the appellant/A16 in Melapalayam and went to Coimbatore by KPN Bus for handing over the same to Kichan Buhari/A15. As per the instruction of the appellant/A16, the witness Abubucker Siddiqe @ Pooli of Melapalayam took him to Tirunelveli Junction Bus stand in his two wheeler for boarding Bilal Hussain to Coimbatore along with consignment which was facilitated by the appellant in furtherance to the common design.

4.The learned counsel for the appellant would submit that there is no identical materials on record to attract the offence committed by the appellant/A16. The only material relied on by the respondent against the appellant/A16 is the confession statement of co-accused which at any stretch of imagination cannot be a base of his involvement in the crime. He would further submit that it is a well settled preposition that a confession of a co-accused cannot be a basis for conviction as it is not a substantive evidence. It is also a well settled preposition of law that the Court cannot start with the confession of a co-accused. Further, previous cases attributed against the appellant were registered in the year 2012, in which, the appellant was on bail in all the cases, except the above case and another case, which is pending in Bangalore Court. In both cases, he is in custody from the year 2014.

5.Further the learned counsel for the appellant submit that the lower Court without any material had given a finding that there are prima facie allegations available against the

appellant. The only material against the appellant is the confession of co-accused, which is inadmissible under the Indian Evidence Act, 1872. Further, in this case all the accused were similarly placed have been granted bail by the trial Court or before this Court. He further contended that as per the sanction order in G.O.Ms.No.68, dated 22.01.2014, the only reference to the appellant is that he had facilitated the transportation of explosives, which is based on the confession of the co-accused. Hence, he prays for grant of bail to the appellant.

6.The contention of the appellant is that as per Repealing and Amending Act, 2017 No.2 of 2018 from 5th January, 2018, the amendments made in the Unlawful Activities (Prevention) Amendment Act, 2008 namely Section 43(a) to (f) is no more in the statute and the lower Court placing reliance of Section 43 (d) of the Unlawful Activities (Prevention) Amendment Act is unreasonable and cannot be taken into consideration.

7.Per Contra, the learned Additional Public Prosecutor has filed a counter opposing the bail application of the appellant by stating that during February 2013, consignment of 10 kgs of explosives out of 40 kgs were procured and handed over by Paravai Badhusah/A14 to the appellant, which was received by Kichan Buhari/A15 in Coimbatore through Bilal Hussain/A6. Bilal Hussain/A6 was arrested on 06.08.2013 for his involvement in the conspiracy, possession and transport of explosives. A6, who has confessed that on the instruction of Sahul Hameed @ Katta Shahul/A2, he received 12 kgs of explosives from the appellant in Melayapalayam and went to Coimbatore by KPN Bus for handing over the same to A15 Kichan Buhari. He further confessed that as instructed by the appellant, witness Abubucker Siddiqe @ Pooli of Melapalayam took him to Tirunelveli Junction bus stand in his two wheeler.

8.Further, the learned Additional Public Prosecutor submitted that during the month of March 2013, the consignment of 15 kgs of explosives was handed over to Paravai Badhusa/A14 and the appellant by Daniel Prakash/A12 in front of Syed Ali/A7. These explosives were transported to Melapalayam and kept in the house of Paravai Badhusa/A14.

9.He also stated that the Court below on 11.12.2014 issued P.T. Warrant against the appellant and he was produced before the Court below on 15.12.2014 from Central Prison, Palayamkottai and remanded. Further, he submitted that the appellant was involved in the following cases:

S.No .	Station Crime No.	Date of Arrest	Date of Bail	Stage
1.	Achanpudur PS Cr.No.302/08 u/s.5(a) 1 E Act & 294(b), 353, 307, 506(ii) IPC, 25(i) (a) Arms Act	Surrender on 05.02.2009	19.02.2009	P.T
2.	Melapalayam PS Cr.No.382/09 u/s.353, 506 (ii) IPC PT	07.05.2009	19.06.2009	P.T
3.	Melapalayam PS Cr.No.188/12 u/s.147 of 4 of TNPPDL Act	05.03.2012	09.03.2012	P.T
4.	Melapalayam PS Cr.No.1222/12 u/s.147 of 4 of TNPPDL Act	06.10.2012	21.12.2012	P.T.
5.	Melapalayam PS Cr.No.1223/12 u/s.147 of 4 of TNPPDL Act	06.10.2012	21.12.2012	P.T
6.	Melapalayam PS Cr.No.1224/12 u/s.147 of 4 of TNPPDL Act	06.10.2012	21.12.2012	P.T
7.	Perumalpuram PS Cr.No.1236/12 u/s.147, 148, 336, 324 IPC and 3 of TNPPDL Act and 9 of Explosive Act	Anticipator Surrendered y Bail and ordered on sureties 07.11.2012 produced on (Crl.O.P. 22.11.2012. (M.D). NBW issued No.15256/12 and) produced through P.T. Warrant on 21.01.2014 Judicial Custody	P.T	
8.	Nagercoil Nesamani Nagar PS Cr.No.149/13 u/s.294 (b), 307 IPC [M.R.Gandhi case]	23.04.2013	Judicial Custody	P.T

S.No .	Station Crime No.	Date of Arrest	Date of Bail	Stage
9.	Bangalore City Viyalikaval PS Cr.No.118/13 u/s.120(b), 121, 121(a), 123, 307, 332, 435, 201 IPC 3, 4, 5, 6 IES Act 1984, 3 & 4 Prevention of Damage to Public Property Act, 3, 10, 11, 13, 16, 17, 18, 19, 20 Unlawful Activities of Prevention Act 1967.	Produced through P.T. Warrant	Judicial Custody	P.T

10.He further submits that timely seizure of the explosives has saved the catosphere, otherwise explosions would have occurred in many places and affected communal disharmony and would have caused loss of innocent lives of people. Hence, he strongly objected to grant bail to the appellant.

11.This Court on perusal of the materials and on analysis of the submissions made by the appellant and the prosecution, finds that the only material as against the appellant is the confession of Bilal Hussain/A6 and the statement of Abubucker Siddique @ Pooli of Melapalayam.

12.Further on perusal of the statement of Abubucker Siddique @ Pooli recorded under Section 161(3) of Cr.P.C, it is seen that during the first week of January 2013, the appellant has handed over bus ticket and also Rs.1,000/- for wayside expenses to Bilal Hussain/A6 and A6 requested Abubucker Siddique @ Pooli to drop him in the bus stand. On his request, the appellant picked up Bilal Hussain/A6 in his motor bike and dropped him on the same day. On 06.08.2013 after the arrest of Bilal Hussain/A6, this witness came to know about the above case. Other than this statement, there is no incriminating material against the appellant. Further in this case, out of 19 accused, 16 accused have been already granted bail including Bilal Hussain/A6, Daniel Prakash/A12 and Sahul Hameed @ Paravai Badhusah/A14. They were the co-accused linked to the appellant, who are similarly placed.

13.Taking note of the fact that except three accused all the other accused were granted bail, who are similarly placed and also considering the materials relied upon by the prosecution against the appellant, this Court is of the opinion that the appellant is entitled for bail with certain conditions. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions:-

14.The petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for a like sum to the satisfaction of the Special Court under the National Investigation Agency Act 2008, Sessions Court for Exclusive trial of Bomb Blast cases, Poonamallee.

(i) The petitioner shall report before the respondent Police daily at 06.00 p.m until further orders.

(ii) The petitioner shall not tamper with evidence or witness either during the investigation or trial.

(iii)The petitioner shall not abscond either during investigation or trial and

(iv) In the event of any violation of the above conditions, the respondent Police is at liberty to move application for cancellation of bail.

Sd/-

Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Court under the National Investigation Agency Act 2008, Sessions Court for Exclusive trial of Bomb Blast cases, Chennai at Poonamallee, Chennai.

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

3.The Public Prosecutor, High Court, Madras.

4.The Superintendent, Central Prison, Palayamkottai.

+1cc to Mr.R.Vivekananthan, Advocate, S.R.No.52644

Cr1.A.No.857 of 2018

SAI (CO)

RRS (02/07/2019)