

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2019
Pronounced on : 03.04.2019

CORAM:

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

Criminal Appeal No.870 of 2018

Sathyamarty @ Padma

... Appellant

-Vs-

State represented by:

The Deputy Superintendent of Police,
"Q" Branch CID,
Dharmapuri,
(Uthangarai P.S.Cr.Nos.1004/02, 1005/02,
1006/02 and Kallavi Police Cr.No.434/02)

... Respondent

PRAYER: Criminal Appeal filed under Section 34 of Prevention of Terrorism Act, 2002, to set aside the impugned order in CrI.M.P.No.533 of 2018 dated 20.12.2018 in Spl.C.C.No.1 of 2018 on the file of the Special Court Under Prevention of Terrorism Act, Ponnamallee, Chennai and enlarge the appellant on bail to secure the ends of justice.

For Appellant : Mr.R.Sankarasubbu

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

J U D G M E N T

[Order of the Court was made by M.NIRMAL KUMAR, J.]

The appellant is arrayed as accused in Spl.C.C.No.1 of 2013 on the file of the Special Court Under the Prevention of Terrorism Act (POTA), 2002, Poonamallee, Chennai for the offences under Sections 148, 333, 307, 333 r/w 149 of IPC, 307 IPC r/w 149 IPC and Section 120(b) IPC r/w 3(2)(b) of the Prevention of Terrorism Act, 2002 Section 25(1b) (a) of the Arms Act 1959 and Section 3(3), 3(5), 4(b), 22(1) of the Prevention of Terrorism Act, 2002. The charges were framed against 27 accused on 23.11.2004 in C.C.No.5 of 2013 the parent case and

some of the accused absconded. The copies of the charge sheet were given to the accused on 14.07.2003. The Court below issued a Non bailable warrant against the absconded accused and some were secured later. In this case, the appellant was arrested on 24.11.2002. Two PVC Pipe Bombs with match box were recovered from her possession.

2.The appellant filed a bail application in Crl.M.P.No.103 of 2003 before the POTA Court, Chennai and the same was dismissed. Subsequently, the appellant along with five other women accused filed another bail application before this court in Crl.A.No.335 of 2004 and this Court by an order dated 28.04.2005 had granted bail to them. When this Court released them on bail, imposed certain conditions on the appellant which is extracted here under:-

"28. In view of the above situation, there is no reason to hold that these women accused will flee from justice. Therefore, the women accused alone are ordered to be released on bail, on each of them executing a personal bond for a sum of Rs.1,000/- (Rupees one thousand only) with two sureties for a like sum to the satisfaction of the Designated Court, with condition to reside at Poonamallee and report to the Designated Court daily at 10.30 a.m on all working days until further orders. In regard to the other accused, we feel, that they are not entitled to bail and, as such, their appeals are dismissed. No costs.

29. If there is any violation of the conditions imposed by this Court, it is open for the respondent to move this Court by filing necessary application, for cancellation of the bail granted to the women accused."

3.Thereafter, this Court had modified the above said conditions in Crl.M.P.No.4170 to 4172 of 2006 dated 06.09.2006 filed by the appellant and other accused and directed them to appear before the trial Court on all hearing dates. But, the appellant was absent from 23.12.2009 has not complied the conditions and she went underground and continued her activities of the banned CPI (Maoist) organization. Therefore, the trial court issued a Non Bailable Warrant against the appellant on 13.07.2012.

4.On 07.12.2018, the appellant surrendered before the POTA Court, Chennai and sought recall of Non bailable warrant issued against her, since proclamation order was in force, she was remanded to Judicial custody. Thereafter, she filed a bail

application in Crl.M.P.No.533 of 2018 before the POTA Court, Chennai. The POTA Court, Chennai analyzed all the facts and dismissed the bail application on 20.12.2018. Therefore, the present appeal has been filed to set aside the order in Crl.M.P.No.533 of 2018 dated 20.12.2018.

5.The contention of the appellant is that the order of the trial Court is contrary to law, weight of evidence. The trial Court, having accepted that the appellant was suffering from serious nature of heart ailment i.e., SVT (Supra Ventricular Tachycardia) had not shown any sympathy and compassion. Even though, her health condition needed medical attention and care. The other reason given by Court below was that, she was a member of the Banned organization for which she attended the meeting and was arrayed as an accused. He further submitted that earlier bail application in Crl.A.No.335 of 2004 dated 28.04.2005 she was granted bail by this Court and the same was cancelled without any notice to her. The appellant being in prolonged detention is sufficient to grant bail. Now, the appellant is bedridden and her health condition is deteriorating day-by-day and the condition in the prison is inhuman and inhospitable. She needs immediate medical treatment and she has to get admitted in the hospital for the same. The findings given by the Court below is illogical and rejected the bail petition unjustly.

6.Further, he submits that the appellant did not abscond. While she was returning after medical treatment from Ernakulam to Chennai, the appellant was illegally arrested by a group of Police in civil dress at Chennimalai Road Railway Station, Erode, for which her husband Vivekanandan filed H.C.P.No.1154 of 2018 before this Court. This Court by an order dated 19.06.2018 had closed the Habeas Corpus Petition with a direction to the respondent to inform the appellant's husband as and when a Non bailable warrant against the appellant was executed. The husband of the appellant filed a similar Writ Petition before the High Court of Judicature at Hyderabad for the state of Telangana and Andhra Pradesh vide W.P.No.22306 of 2017. As regards the Writ petition, the High Court of Hyderabad had dismissed the same for the reason that the appellant did not make out a Prima facie case.

7.Further, the learned counsel for the appellant submitted that on 10.12.2018 the appellant was admitted in the Stanley Government Hospital, Chennai on the complaint of chest pain, giddiness and was given treatment in the Cardiology Department for two days. Without giving proper and complete treatment against her wish, she was discharged on 13.12.2018 from the Stanley Government Hospital, Chennai and on the way back to the Women Prison, Puzhal, Chennai again she developed chest pain and

taken back to the Stanley Government Hospital, Chennai. Thereafter on 15.12.2018, the appellant was discharged from the Stanley Government Hospital.

8. Since, the appellant health condition had not improved, the respondent and the prison authorities failed to give proper attention and medical aid, the appellants husband filed HCP.No.2941 of 2018 before this Court and this Court by an order dated 27.12.2008 disposed the Habeas Corpus Petition with a direction to admit the appellant for treatment in Multi Specialty Hospital, Omandurar Estate, Chennai and the appellant was to bear the cost of treatment and for security and other incidental cost. Accordingly, the appellant was taken to Multi Specialty Hospital, Omandurar Estate, Chennai on 31.12.2018 and she was treated as Out-Patient and was taken back to the Women Prison, Chennai, though her health condition needed prolonged treatment as in-patient. The respondent as well as the Jail authorities are not providing proper medical care for her heart problem. Due to which her health condition is deteriorating day-by-day and putting her life to danger. Hence, prays to enlarge the appellant on bail.

9. The learned Public Prosecutor filed a counter and submitted that the appellant was arrested on 24.12.2002. During her arrest, she was found in possession of two PVC Pipe Bombs with match box. Thereafter, charge sheet was filed on 19.05.2003 for the offences under Sections 148, 333, 307, 333 r/w 149 of IPC, 307 IPC r/w 149 IPC and Section 120(b) IPC r/w 3 (2)(b) of the Prevention of Terrorism Act, 2002 Section 25(1b) (a) of the Arms Act 1959 and Section 3(3), 3(5), 4(b), 22(1) of the Prevention of Terrorism Act, 2002. Thereafter, the appellant filed a bail application in CrI.MP.No.103 of 2003 before the POTA Court, Chennai and the same was dismissed. Subsequently, the appellant along with five other accused filed another bail application before this court in CrI.A.No.335 of 2004 and this Court by an order dated 28.04.2005 had granted bail to them.

10. Thereafter, this Court had modified the conditions in CrI.M.P.No.4170 to 4172 of 2006 dated 06.09.2006 filed by the appellant and other accused and directed the appellant as well as other women accused to appear before the trial Court on all hearing dates. But, the appellant was absent from 23.12.2009 without complying the conditions and she had gone underground and continued her activities of the banned CPI (Maoist) organization. Therefore, the POTA, Court, Chennai issued a Non Bailable Warrant against the appellant on 13.07.2012.

11. The learned Public Prosecutor further submitted that the appellant absconded herself from 23.12.2009 to 13.07.2012 and

317 Cr.P.C was filed periodically and allowed. Thereafter only a Non bailable warrant was issued on 13.07.2012. Since the petitioner was absconding, on 01.07.2014 surety action petition under Section 446(A) of Cr.P.C was initiated in CrI.M.P.No.290 of 2014 in which, the sureties viz., Suryanarayanan father of the appellant and Sivaraman Karkala her Junior father paid penalty and got discharged from their liability as surety. Thereafter, on 02.02.2015, the case as against the appellant and the other two absconding accused was split up into Spl.C.C.No.1 of 2018. This Court in CrI.M.P.No.3631 of 2016 had cancelled the bail granted to the appellant on 20.01.2017 and issued a Non bailable warrant on 10.02.2017.

12.He further submitted that the proclamation proceedings initiated against the appellant under Section 82 Cr.P.C in CrI.M.P.No.318 of 2017 and paper publication was effected on 27.12.2017. Even after the publication of the proclamation, the appellant failed to appear before the Court below. In the meanwhile, she had surrendered on 07.12.2018 when proclamation proceedings were pending against her. Therefore, the appellant was remanded to Judicial custody by the POTA Court, Chennai. During this period on 10.12.2018, she complained of heart problem and admitted in the Stanley Government Hospital, Chennai for two days and on 13.12.2018, while she was taken back to the Central Prison, Chennai again she complained of heart problem and was taken back to the same hospital. Thereafter, she was discharged on 15.12.2018. During her absconding period, the appellant's husband filed an HCP.No.1154 of 2018 alleging that the respondent Police in civil dress had detained the appellant at Chennimalai Road Railway station, Erode, while she was returning from Ernakulam to Chennai for her medical treatment.

13.The appellant's husband also filed a similar Writ Petition before the High Court of Judicature at Hyderabad in W.P.No.22306 of 2017 and the same was dismissed. Thereafter, the appellant surrendered and her husband filed a H.C.P.No.2941 of 2018. This Court in H.C.P.No.2941 of 2018 had directed the Prison authorities to provide medical treatment at Multi Specialty Hospital, Omandurar Estate, Chennai under cost. The appellant was taken to the Multi Specialty Hospital on 31.12.2018 and she was treated as out patient and thereafter she was taken back to the prison.

14.The diary of events would clearly show that she was granted bail, but did not comply with the conditions of this Court and had gone underground from the year 2009. The sureties, who are none other than father and Junior father of the appellant paid penalty and discharged themselves from their liability as surety. Despite prolonged efforts, the appellant could not be secured. In the meanwhile, the appellant's husband

made allegations as though the appellant was detained by the respondent by filing the Habeas Corpus Petitions before this Court and High Court of Hyderabad. Finally, this Court cancelled the bail granted to the petitioner and issued a Non bailable Warrant. Thereafter, the Proclamation proceedings was initiated and paper publication were carried out, then only the appellant had surrendered on 07.12.2018.

15. Considering the facts and circumstances of this case, the Special Court Under the Prevention of Terrorism Act (POTA), 2002, Poonamallee, Chennai had given a detailed, well-reasoned order, dismissing the bail application of the appellant. Further, the appellant did not produce any medical records. Whenever appellant had any health issues, she was taken to Stanley Government Hospital, where all medical facilities are available and the appellant was attended by specialized Doctors. Further, on the request of the appellant, she was taken to Multi Specialty Hospital, Omandurar Estate, Chennai. Therefore, it is seen that even according to the appellant she was taken back to the Central Prison, Puzhal, Chennai only on the advice and approval of the Doctors and on undertaking that whenever the appellant is in need of medical treatment, the prison authorities provide the same. The case is of the year 2018 and trial is delayed for one reason or other. Therefore, the respondent strongly objected to enlarge the appellant on bail.

16. This Court on the submissions made and on perusal of the records does not find any illegality or infirmity in the order passed by the Court below. It is seen that the contention of the appellant is that she is suffering from SVT (Supra Ventricular Tachycardia) which is nothing but "increase in heart rate above normal". For this health issue, the appellant is taking treatment for a long time. From the order of the Court below in Paragraph 18, it is found that the copy of the discharge summary dated 28.11.2007 of the Venkateswara Hospital, Chennai had been produced and the heart ailment history of the appellant shows that, she is living with this particular ailments for nearly ten years as of 28.11.2007 including SVT (Supra Ventricular Tachycardia). The respondent and the jail authorities submit that, whenever the appellant requires any treatment, she would be attended with medical care as to her health requirements in the Central Prison Hospital; Stanley Government Hospital, Chennai; Multi Specialty Hospital, Omandurar Estate, Chennai, or any other hospital, as per the doctors advice.

17. In view of the above and taking into consideration of the facts and circumstances of the case, this court is not inclined to enlarge the appellant on bail.

In the result this Criminal Appeal is dismissed. No costs.

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Sd/-
Assistant Registrar(CS IV)

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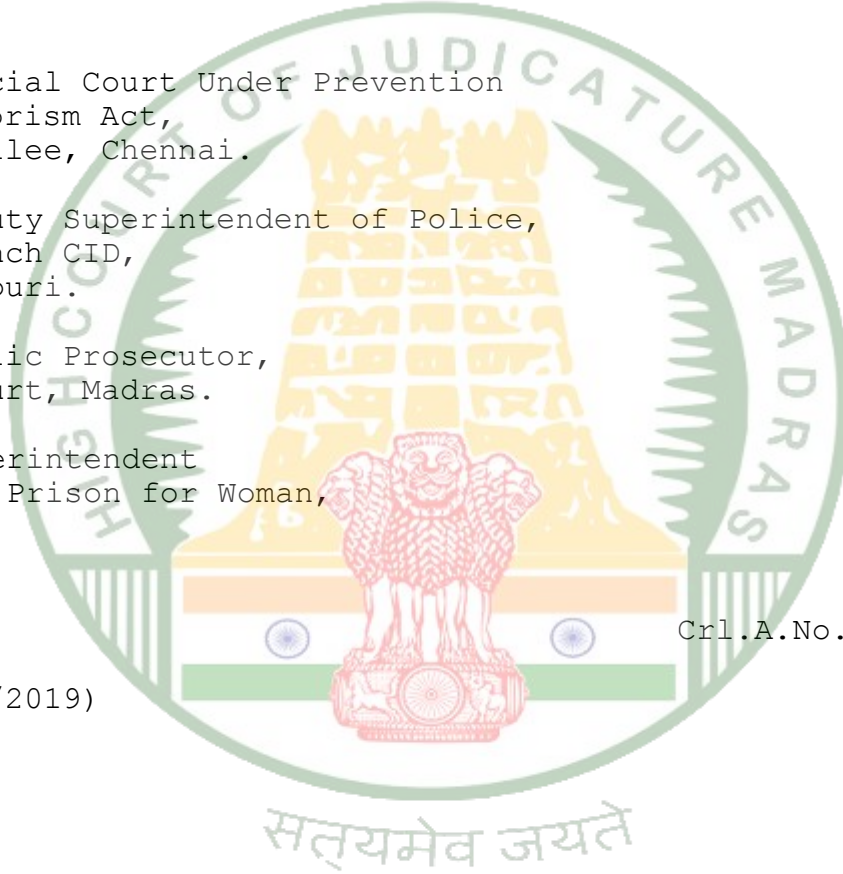
Sub Assistant Registrar

To

- 1.The Special Court Under Prevention
of Terrorism Act,
Ponnamallee, Chennai.
- 2.The Deputy Superintendent of Police,
"Q" Branch CID,
Dharmapuri.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent
Special Prison for Woman,
Puzhal.

Crl.A.No.870 of 2018

Kak (30/05/2019)



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