

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.02.2020

Judgment Delivered on : 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal Nos.852 to 856 and 862 to 866 OF 2019

S.NIJAM ALI @ NIJAM	..APPELLANT/ACCUSED No.3 in CRL A No.852 of 2019
MOHAMMED RIYAS @ MOHAMED RIYAZ	..APPELLANT/ACCUSED No.2 in CRL A No.853 of 2019
MOHAMMED ASARUDEEN	..APPELLANT/ACCUSED No.1 in CRL A No.854 of 2019
SARBUDEEN	..APPELLANT/ACCUSED No.4 in CRL A No.855 of 2019
MOHAMMED RIZWAN @ MOHAMED RISWAN @ RIZWAN	..APPELLANT/ACCUSED No.5 in CRL A No.856 of 2019
MOHAMED FARUK @ FARUK	..APPELLANT/ACCUSED No.17 in CRL A No.862 of 2019
THOWHEETH BATCHA @ TOWHEED BATCHA	..APPELLANT/ACCUSED No.8 in CRL A No.863 of 2019
MOHAMED FARVEES @ MOHAMMED PARVISH @ FARVEES	..APPELLANT/ACCUSED No.7 in CRL A No.864 of 2019
MOHAMED THOUFIK @ MOHAMMED TOWFEEK	..APPELLANT/ACCUSED No.6 in CRL A No.865 of 2019
SHALI @ MYDEN AHMED SHALI	..APPELLANT/ACCUSED No.18 in CRL A No.866 of 2019
VS.	
UNION OF INDIA, REP. BY THE ADDITIONAL SUPERINTENDENT OF POLICE, NATIONAL INVESTIGATION AGENCY, KOCHI BRANCH. (IN RC.NO.06/2019/NIA/DLI)	
..RESPONDENT IN ALL CRL.As.	

Prayer in Crl.A.Nos.852 to 856 and 862 to 866 of 2019 : Criminal Appeals filed under Section 21 of the National Investigation Agency Act (NIA Act) against the order dated 19.11.2019 in Crl.M.P.Nos.347, 346, 345, 348, 349, 353, 352, 351, 350 and 354 of 2019 respectively, in C.C.No.2 of 2019 on the file of the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai, at Poonamallee and consequently enlarge the Appellants on bail in R.C.No.06/2019/NIA/DLI pending before the learned Special Court for Exclusive Trial of Bomb Blast Cases Chennai at Poonamallee.

For appellants : Mr.T.Mohan for Mr.A.Raja Mohamed in Crl.A.Nos.852 to 856 of 2019

Mr.S.Xavier Felix for Mr.A.Nowfal in Crl.A.Nos.863 to 865 of 2019

Mr.S.A.S.Alaudeen in Crl.A.No.862 and 866 of 2019

For respondent : Mr.C.S.S.Pillai, Spl.P.P. assisted by Mr.Arjun Ambalapatta, Public Prosecutor for NIA Act.

COMMON JUDGMENT

R.SUBBIAH, J

As against the dismissal of the respective Crl.M.Ps. filed by the appellants/accused under Section 437 read with 439 Cr.P.C., the present Criminal Appeals have been filed by them.

2. The case of the prosecution is as follows:

(a) A1 to A5, A-17, A-18 and others are the leaders and workers of Popular Front of India (PFI) and its political organisation called Social Democratic Party of India (SDPI) and they were deputed by the PFI to do 'Dawah' work through their institution 'Arivagam' in Theni District of Tamil Nadu. While they were engaged in the Dawah work at Paku Vinayakan Thoppu (Pakkanamthoppu) Village, Thiruvidadaimarudur, on 05.02.2019, the deceased Ramalingam raised objections against the Dawah work, as poor and downtrodden people were being forcibly converted to Muslim. Annoyed by the protest against their Dawah work and

subsequent altercation with the deceased Ramalingam, A1 to A5, A17 and A18, along with the other accused belonging to the PFI and SDPI, conspired to wage 'Jihad' against the deceased, who is a non-Muslim, in the said village so as to teach a lesson to the deceased, apart from creating deterrence amongst the public against resisting such Dawah work by the PFI.

(b) Thus, on 05.02.2019 around 8.30 hours, the deceased Ramalingam raised objections to the Dawah work being carried out, as they were allegedly indulging in forcible conversion of the poor people to Islam. Consequently, some verbal altercations took place between the deceased Ramalingam and the accused persons. During such altercation, the deceased removed "Taqiyah" (religious skull cap) worn by A17 and wore it for himself, besides he applied "Thiruneer" (holy ash) on the forehead of A17 to emphasise that all religions are same. The situation was controlled with the intervention of the local villagers and they peacefully dispersed. At the time of verbal altercation, a part of the incident was videographed by the son of the deceased who was also present there with his father. Immediately, A1 to A5, A17 and A18 and others conspired together near the place of quarrel and decided to act against the deceased, so as to create deterrence against such challenges on their Dawah activities, so that no one dares to ever come forward against their proselytising activities. A1 left the place in his Bajaj Platina Motor Cycle bearing Registration No.TN-51-R-2910, A2 left the place in his Bajaj Pulsar Motor Cycle bearing Registration No.PY-02-L-5130, while A3 to A5, A17 and A18 and others left the place by a Tempo Traveller (Force) bearing Registration No.TN-21-AJ-2315 to conspire further and carry out the terrorist act.

(c) Further, the matter was taken up by PFI leadership and it was decided that the organisation must act immediately through its members. Consequent to this decision, A1 to A8, A11 and A13 and others, who were PFI members, hatched a criminal conspiracy and assembled near Mohideen Andavar Mosque, Thirubhuvanam (Periya Palli - Big Mosque) around 11 hours on 05.02.2019. A12 and A15 to A18 and others had also conspired and met at PFI Office, Kumbakonam at about 11.30 hours. While A1, A5 to A8, A11 to A13, A15 and A16 and others conspired to meet again near Periya Palli (Big Mosque) around 12.30 hours. Later, A6 to A8, A11 to A16 and others, to hatch a conspiracy, met at the residence of A11 around 13.30 hours and decided to do Jihad against Ramalingam by chopping off his hands and to kill him. Accused persons also conspired over phone with the other accused persons from the places where they met.

(d) In furtherance of the said conspiracy and to execute the plan, A11, who is the coordinator of Dawah work for PFI in Thanjavur District, A12, who is the Thanjavur North District President of PFI and A16, who is one of the leaders of PFI

Thanjavur North District, instructed A1 to A5 to inform about the incident, which had happened during the morning hours of 05.02.2019 to the other PFI/SDPI cadres so as to disturb communal harmony and also to obtain help from the cadres. A11, A12 and A16 recruited A6 and A7 as members of reconnaissance team and instructed them to use their motor-cycles for reconnaissance of the victim. A11, A12 and A16 also recruited A8 and A13 to A15 as assailants. A11, A12 and A16 had conspired along with A9 and used the Maruti Swift Dzire Car bearing Registration No.TN-48-L-1280 of A9 for using the same in the commission of the crime. A11, A12 and A16 conspired along with A10 and arranged hide-outs for A6 to A8 and A13 to A15 at Karaikal. A11, A12 and A16 also instructed the assailants to collect suitable weapons, chilly powder, iron rod etc., for the attack. A11 and A12 entrusted A16 with the responsibility of monitoring the entire execution of the crime.

(e) In furtherance of the said conspiracy and to execute the plan, A6 and A7 carried out reconnaissance of the movements of the deceased by using their motor-cycles bearing Registration Nos.TN-68-H-9786 (Yamaha AFZS) and TN-68-E-9354 (Hero Splendour Pro), respectively, from the afternoon on 05.02.2019. At the same time, A8 and A13 to A15 waited in the Maruti Swift Dzire Car bearing No.TN-48-L-1280 in and around the Muslim Street, Thirubhuvanam, for getting information from A6 and A7 about the movements of the deceased.

(f) In pursuance of their conspiracy, on 05.02.2019 at about 23.15 hours, when the deceased Ramalingam and his son Shiyam Sundhar were returning to their home at Melathundil Vinayakan Pettai, Thirubhuvanam, in their mini-lorry bearing Registration No.TN-68-H-9762 (Ashok Leyland Dost), and while their vehicle was entering the New Muslim Street, Thirubhuvanam, A8 and A13 to A15 intercepted the vehicle of the deceased with the Maruti Swift Dzire Car bearing Registration No.TN-48-L-1280 at New Muslim Street at 23.15 hours. All the four accused got down from the Swift Dzire car with big knife and bill-hooks/aruvals, questioned the deceased about the altercation with the PFI Dawah team in the morning and abused the deceased with obscene language. A8 tried to remove the key forcibly from the vehicle and the deceased caught hold of the hand of A8 and prevented it. The deceased also told them that the matter had already been discussed with Rasudeen and that he would speak next day morning. At that time, A8 shouted that, "if we leave you, you will indulge in similar activities". Then A8 took out chilli powder and threw it 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 him, A13 and A15 caught hold of the right hand of the deceased and A8 inflicted heavy cut injury on the right elbow of the deceased by using a

big knife and again he inflicted another cut injury on the left palm, thereby causing deep injury to tissues, muscles, vessels, nerves and bone. The accused then pulled out Ramalingam from the vehicle and surrounded him, brandishing deadly weapons including bill hooks and big knife in order to kill him. A13 shouted and said, "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 sustained cut injury on his left palm. The assailants escaped from the scene in their car on seeing a vehicle entering into the Muslim Street. Those deep injuries caused the death of Ramalingam at 00.48 hours on 06.02.2019, thereby the accused persons committed the terrorist act of lethally attacking and killing Ramalingam, with the intention of creating terror amongst a section of people. In furtherance of the conspiracy, on the same day, A10 harboured the assailants and reconnaissance team at Karaikal. This act of the accused killing Ramalingam had caused communal disharmony, besides terror in the minds of particular section of people as well as the general public at large in the area and beyond.

(g) On the basis of the complaint lodged by Mr. Shiyam Sundar, son of the deceased, a case was registered at Thiruvidadaimarudur Police Station, Thanjavur District, vide Crime No.17 of 2019 under Sections 341, 294(b) and 307 IPC on 06.02.2019 by the Sub-Inspector of Police, Thiruvidadaimarudur Police Station, Thanjavur District, against four identifiable persons and FIR was forwarded to the Judicial Magistrate-I, Kumbakonam, Thanjavur District. The Medical Officer of Thanjavur Medical College Hospital declared Ramalingam as brought dead. Thereafter, Thiruvidadaimarudur Police altered the Sections of law to include Section 302 IPC. The Inspector of Police, Thiruvidadaimarudur Circle, Thanjavur District took up the investigation, conducted inquest and prepared observation mahazar, rough sketch, etc., in the scene of crime.

(h) During the course of investigation, based on the statements of witnesses and considering the after-effects of the crime as well as the terror intended to be created by the accused persons and the consequent impact on the minds of particular Section of the people owing to the death of the deceased, on 06.02.2019, the Inspector of Police filed an alteration report before the Court to incorporate Section 15 read with Sections 16, 18, 18-B, 19 and 20 of the Unlawful Activities (Prevention) Act in this case and handed over the investigation to the Deputy Superintendent of Police (Law and Order), Thiruvidadaimarudur Sub-Division, Thanjavur.

(i) During the course of investigation, the Deputy Superintendent of Police, Thiruvidadaimarudur arrested A1 to A5 on 06.02.2019, A6 to A8 on 09.02.2019, A9 on 10.02.2019 and A10 on

12.02.2019. All of them were produced before the Court concerned and they were remanded to judicial custody. A17 and A18 were arrested by NIA on 10.05.2019 and 26.06.2019 respectively and produced before the NIA Special Court at Poonamallee, Chennai and they were also remanded to judicial custody.

(j) Based upon the information as well as confession of the arrested accused persons, the then Investigating Officer had arraigned A11 to A16 as accused in this case and conducted investigation against them. A11 to A16 and other unidentified accused have been absconding ever since the incident.

(k) The then Investigating Officer had seized two motor-cycles and the Swift Dzire car, which were used for the commission of the crime at the instance of the arrested accused and the same were produced before the Court. On examination of the Swift Dzire car used by the assailants, the Scientific Experts recovered blood stains, iron road, knife, etc., from the car. The finger print found in the car used by the accused, was also lifted by the scientific experts and it was sent for Forensic analysis and report awaited. The Test Identification Parade of A6, A7 and A8 were conducted by the Judicial Magistrate and the witnesses including Shiyam Sundar, son of the deceased, and eye witnesses to the attack on Ramalingam, had correctly identified them.

(l) 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 their Order No.11011/08/2019/NIA, dated 05.03.2019, invoked sub-section (4) of Section 6 read with Section 8 of the National Investigation Agency Act and entrusted the investigation to the National Investigation Agency (NIA). Accordingly, the NIA re-registered the case as RC-06/2019/NIA/DLI under Sections 341, 294(b), 307, 120-B, 143, 148 and 302 read with 149 of IPC, besides Section 15 read with Sections 16, 18, 18-B, 19 and 20 of the Unlawful Activities (Prevention) Act on 07.03.2019 and the FIR was submitted before the NIA Special Court, Poonamallee, Chennai. The investigation of the case was completely taken over from the Tamil Nadu Police on 25.04.2019.

(m) On the strength of the warrant issued by the Special Court, the NIA had conducted searches at various places including the houses of the accused persons on 02.05.2019 and incriminating materials/documents related to this case, had been seized. 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 forensic analysis. A search was conducted at the house of A17 on 09.05.2019 after sending proper intimation to the Special Court, where also, incriminating materials were seized. The seized digital devices were forwarded

to CDAC, Thiruvananthapuram for forensic analysis. Mirror images were obtained from CDAC, Thiruvananthapuram and on scrutiny, the association of accused among themselves, for the crime as well as with the PFI and SDPI, was established.

(n) On 06.05.2019, the Special Court, after perusal of the case records, including the documents available in the case file and upon satisfaction of the report filed by the Special Public Prosecutor for NIA under Section 43-D(2) of the Unlawful Activities (Prevention) Act, allowed the petition filed in CrI.M.P.No.191 of 2019 on 06.05.2019 extending the period of detention of A1 to A10 beyond 90 days and upto 180 days.

(o) The Special Court had allowed Police custody of 11 accused persons, namely A1 to A10 and A17 from 12 hours on 27.05.2019 to 12 hours on 03.06.2019, vide order in CrI.M.P.No.225 of 2019, dated 27.05.2019. Accordingly, all the accused persons were taken into custody, interrogated and their overt act in the crime ascertained.

(p) The investigation so far conducted revealed that A1 to A5 were present at Pakku Vinayakan Thoppu (Pakkanamthoppu) village along with A17, A18 and others and they had hatched criminal conspiracy at Pakku Vinayakan Thoppu (Pakkanamthoppu) just after the verbal altercation that had taken place between the deceased and Dawah workers. They had also participated along with other accused in the conspiracy meeting that took place near Periya Palli (Big Mosque), Thirubhuvanam and other places after the altercation.

(q) During the custodial interrogation, A1, A2 and A6 to A10 have confessed regarding the places of conspiracy/hide-out/other important places and they have voluntarily disclosed the said places. Accordingly, A1 and A2 had pointed out the conspiracy places, A6 and A7 had pointed out the places where they did reconnaissance over the deceased and had taken shelter, A8 had pointed out the places where he waited for the victim for committing the terrorist act and A10 pointed out the places where he arranged the hide-outs to the assailants and to the reconnaissance team in the presence of independent witnesses.

(r) During the custodial interrogation, A1, A2, A5, A7, A9 and A10 have voluntarily disclosed the details of their social media accounts. Accordingly, the contents in their social media accounts have been extracted as disclosed by the accused persons in the presence of independent witnesses. These extractions clearly prove their association with PFI and its political organisation SDPI.

(s) The investigation conducted so far revealed that the accused persons are active cadres or leaders of PFI/SDPI, which had been banned in some States in India for their anti-national and fundamentalist activities. The digital evidence collected, examination of witnesses, material objects and recovery of other

incriminating materials clearly corroborate the facts of the crime. It has been brought out from the evidence collected that the accused conjointly acted as members of a terrorist gang for attacking and killing Ramalingam, with the intention of striking terror amongst a section of people.

(t) After completion of the investigation, the NIA had collected sufficient prosecutable evidence against A1 to A18 and filed charge sheet before the NIA Special Court, Poonamallee, Chennai on 02.08.2019 before expiry of 180 days as envisaged under Section 43-D(2) of the Unlawful Activities (Prevention) Act, which was taken on file as C.C.No.2 of 2019.

(u) Since A11 to A16 successfully evaded arrest, the prosecution filed petition before the trial Court and the case against them was split up and a separate C.C.No.3 of 2019 was assigned and NBW was issued against A11 to A16.

3. Pending trial, the appellants herein filed petitions seeking for bail before the trial Court, which were dismissed, against which, the present Criminal Appeals have been filed by the accused persons.

4. The learned counsel for the appellants in CrI.A.Nos.863 to 865 of 2019 submitted that on a perusal of the impugned orders passed by the Special court, it would show that there are no sufficient evidence to prove that the accused persons are guilty of the offences. In spite of the same, the Special Court has pronounced the order in favour of the prosecution. When there is no sufficient evidence against the accused persons, then the benefit of doubt goes in favour of the accused and they may be released on bail without any further incarceration. At the outset, the Special Court ought to have satisfied itself that there are reasonable grounds for believing that the appellants are not guilty of such offence and they are not likely to commit any offence while on bail. The learned counsel further submitted that the statement of the witnesses recorded in this case is unnatural. It appears to be tailor-made statement. The charge-sheet filed by the respondent is not a complete one. The respondent filed the so-called final report on 02.08.2019, which was taken on file on the very same day without following due process of law. A perusal of the charge-sheet would show that 245 witnesses are shown in the Memo of Evidence, out of which, the statements of 63 witnesses were not recorded by the respondent under Section 161(3) Cr.P.C. The learned counsel further submitted that the charge-sheet also reveals that the prosecution relied voluminous exhibits numbering 353 and 182 material objects.

5. The learned counsel for the appellants in CrI.A.Nos.863 to 865 of 2019 further submitted that the Special Court failed to consider that the intention of the Legislature to enact the Unlawful Activities (Prevention) Act is only to prevent the terrorism and it is not the intention of the Legislature that every criminal should be tried under the said Act, when the fall-out of his activity does not extend beyond the normal frontiers of the ordinary criminal activity. The learned counsel invited the attention of this Court to Section 43-E of the Unlawful Activities (Prevention) Act and submitted that the statement given before the learned Magistrate under Section 164 Cr.P.C. by the de-facto complainant and his mother L.W.1 and L.W.2 on 21.02.2019 were recorded as Documents D-48 and D-49. The statement in the said documents would indicate as if an ordinary murder had taken place. Absolutely, the said statement does not show that any terrorist activities had taken place. The learned counsel also invited the attention of this Court to Section 15 of the Unlawful Activities (Prevention) Act and submitted that in a prosecution for an offence under Section 15 of the said Act, there must be recovery of incriminating materials from the accused as required under Section 43-E of the said Act. In this case, no such materials or weapons have been recovered. The learned trial Judge, without considering the provisions of Section 43-E of the said Act, had passed the impugned orders. The accused persons are reputed persons leading a respectable life and having permanent residence and further, there is no previous criminal record against them. There is no chance for the accused persons to escape from the clutches of the prosecution. The accused persons are in incarceration for more than 296 days. In fact, the respondent had completed the investigation and filed the charge-sheet before the Special Court. Thus, there is no further requirement for the judicial custody of the accused persons. In this regard, the learned counsel invited the attention of this Court to the decision of the Supreme Court reported in 2011 (1) SCC 784 (State of Kerala Vs. Raneef) and prayed for allowing the appeals.

6. The learned counsel for the appellants in CrI.A.Nos.852 to 856 of 2019 and the learned counsel for the appellants in CrI.A.Nos.862 and 866 of 2019, in unison, submitted that this Court has already granted bail to A8 and A9 in CrI.A.No.421 of 2019, by order dated 06.09.2019 and for rest of the accused persons, liberty was granted to file fresh bail applications for re-consideration by the Special Court. In this regard, the learned counsel relied on paragraphs 22 and 23 of the said order of this Court, wherein it was observed that the charge sheet is now filed in this case, and after filing of the charge-sheet, the lower Court has to necessarily look into the materials under

Section 173 Cr.P.C. and thereafter only decide the bail application on merits by considering the contentions of the appellants with case diary and report under Section 173 Cr.P.C. As per the direction of this Court, the appellants/accused persons have filed fresh bail applications for re-consideration, which were dismissed by the Special Court on 19.11.2019 by passing the impugned orders, without complying with the above direction of this Court. Further, the charges levelled against the appellants along with A17 and A18 and others, are that they are active members of PFI and its political organisation SDPI and that they conspired at Pakku Vinaygam Thoppu Village to kill the deceased Ramalingam for retaliation of his act against A17. In this regard, the learned counsel relied on Section 120-A IPC to elucidate the conspiracy.

7. The learned counsel for the appellants in CrI.A.Nos.852 to 856 of 2019 and the learned counsel for the appellants in CrI.A.Nos.862 and 866 of 2019 further relied on the statement of the witnesses L.Ws.19 to 26, who had spoken about the conspiracy, which is nothing but parrot-like version and the same has no evidentiary value with regard to the incriminating materials against the appellants, and as such, Section 120-B IPC would not get attracted against them, and consequently, the further allied Section of the Unlawful Activities (Prevention) Act also cannot be invoked against the appellants. In fact, earlier, this Court has directed the Special Court to pass orders on the bail application after scrutinising the charge sheet filed under Section 173 Cr.P.C. by the respondent. But the Special Court has not analysed the charge sheet and passed the impugned orders. The Special Court has stated that a detailed examination of the materials cannot be carried out to decide a bail plea, that too at this stage. Further, the Special Court has agreed in its order that it does not come to say that those evidences which are so available, are in the nature of establishing the prosecution case. The Special Court has agreed that there is no sufficient evidence to prove that the appellants are guilty, but the Special Court had denied the bail to the appellants by dismissing the bail applications in a mechanical manner, which is nothing but replica of the version of the prosecution. The Special Court had dismissed the bail application without ascertaining the provisions of Section 43-D (5) of the Unlawful Activities (Prevention) Act to grant bail to the appellants.

8. The learned counsel for the appellants in CrI.A.Nos.852 to 856 of 2019 and the learned counsel for the appellants in CrI.A.Nos.862 and 866 of 2019 further invited the attention of this Court to Section 15(1)(b) of the Unlawful Activities (Prevention) Act and submitted that the deceased in this case

was not a public functionary and therefore, the said Act cannot get attracted. In fact, the Special Court observed that, "..... this Court feels that the allegation of the prosecution that the said Ramalingam was murdered in order to strike terror in the minds of the people of a particular religion, namely the Hindus, cannot be thrown away simply stating that there is absolutely no material to say anything about it. .." In fact, it is settled position of law, as laid down by the Apex Court that mere religious sentiments will not be a ground to deny the rights of the accused. In this regard, the learned counsel relied upon the decision of the Supreme Court reported in 1990 (4) SCC 76 (Niranjan Singh K.S.Punjabi Vs. Jitendra Bhimraj Bijaya). Further, the learned counsel also relied on a decision of the Supreme Court reported in 2007 AIR SCW 2857 (Gajendra Agarwal Vs. State of Orissa) and submitted that the Special Court failed to consider the prima-facie satisfaction of the Court in support of the charge. Further, the trial Court failed to consider the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence. Further, the Special Court also did not consider that there is no reasonable apprehension of tampering with the witnesses by the accused or apprehension of threat to the complainant.

9. The learned counsel for the appellants in CrI.A.Nos.852 to 856 of 2019 and the learned counsel for the appellants in CrI.A.Nos.862 and 866 of 2019 further submitted that the trial Court ought not to have simply rejected the grounds raised by the appellants that since the trial is going to be one which will be prolonged, as the number of witnesses and documents are voluminous in nature, the accused cannot be allowed to continue further in detention. The learned counsels further submitted that it is settled position of law by the Supreme Court in the case of Himansu Chandra Vadan Desai Vs. State of Gujarat, reported in AIR 2006 SC 179 that even if a prima-facie case is established, where presence of the accused would readily be available for trial and there is no likelihood of the accused tampering with the evidence in view of completion of the investigation, the accused should not be detained, particularly when the accused has been long incarcerated and the trial was likely to consume long time. He further relied on a decision of the Supreme Court reported in 2011 (1) SCC 784 (State of Kerala Vs. Raneef) and submitted that the appellants are under incarceration for more than 364 days, the respondent completed the investigation and filed the charge-sheet before the trial Court and there is no requirement of further judicial custody of the appellants. The learned counsels further contended that the Special Court failed to consider the fact that the identity of

the witnesses is hidden by the respondent and there is no chance that if the appellants are enlarged on bail, they will tamper with the witnesses or hamper the evidence. For these reasons, the learned counsel for the appellants in Crl.A.Nos.852 to 856 of 2019 and the learned counsel for the appellants in Crl.A.Nos.862 and 866 of 2019 prayed for allowing the appeals.

10. Countering the above submissions, the learned Special Public Prosecutor appearing for the respondent submitted that earlier, Criminal Appeals in Crl.A.Nos.421 to 424 of 2019 were filed by all the accused persons against the order of dismissal of bail by the lower Court. In the said appeals, this Court granted bail to A9 and A10, vide order dated 06.09.2019 in Crl.A.Nos.423 and 424 of 2019 on the ground that the appellants have made out a prima-facie case for release on bail. So far as others are concerned, this Court had directed the appellants to approach the trial Court, which was directed to consider the bail application on the basis of the allegation in the charge-sheet. There is absolutely no change of circumstances for arriving at an adverse finding as seen from the earlier applications. In fact, in the abovesaid earlier bail applications, this Court has found that the evidence and circumstances were not fit for granting bail to the appellants. The only change in circumstance is in favour of the prosecution, since a complete final report has been filed, subsequent to which, the Special Court for NIA cases is proceeding with the trial against the appellants.

11. The learned Special Public Prosecutor appearing for the respondent further submitted that as per Section 43-D(5) of the Unlawful Activities (Prevention) Act, the Special Court extended the remand of the accused beyond 90 days upto 180 days, vide Crl.M.P.No.191 of 2019, dated 06.05.2019. Thereafter, the charge-sheet has been filed against the appellants for the offences under Sections 120-B, 302 and 153-A IPC and Sections 16, 18 and 20 of the said Act. According to the learned Special Public Prosecutor, Section 43-D of the said Act restricts grant of bail to the accused, if on a perusal of the case diary or the final report, it is believed that there are reasonable grounds that the accusation against the accused persons are prima-facie true. In this case, a prima-facie case is made out against the appellants to deny them the bail applications which was rightly considered by the trial court. In this regard, the learned Special Public Prosecutor relied on a decision of the Supreme Court reported in 2005 (8) SCC 21 (State of U.P. through CBI Vs. Amarmani Tripathi), in which the Apex Court held that the

following criteria must be looked into for grant of bail in a case of this nature:

- (i) Whether there is any prima-facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the charge;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with, and
- (viii) danger, of course, of justice being thwarted by grant of bail.

12. The learned Special Public Prosecutor appearing for the respondent also relied on a decision of the Supreme Court reported in AIR 1994 SC 2623 = 1994 (4) SCC 602 = MANU/SC/0526/1994, wherein the Apex Court observed as follows:

"7. 'Terrorism' is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the

society and create a sense of fear and insecurity. A 'terrorist' activity does not merely arise by causing disturbance of law and order or of public order. The fall out of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law. Experience has shown us that 'terrorism' is generally an attempt to acquire or maintain power or control by intimidation and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes 'terrorism' from other forms of violence, therefore, appears to be the deliberate and systematic use of coercive intimidation."

13. The learned Special Public Prosecutor further submitted that from among the list of accused persons in this case, A11 to A16 are still absconding, irrespective of the efforts made by the Police to nab them. The appellants/accused persons are hardcore activists of PFI/SDPI which had been involved in many terrorist activities within the country. They obey orders of their leaders without looking at the consequences due to their committed nature towards their cause. It is only natural for the appellants/accused persons to repeat such activities against innocent persons. They have reasons to commit such atrocities against the witnesses herein, who have come forward to speak bravely. But for the incarceration of the accused, the witnesses could testify bravely against these accused and therefore, they should not be let on bail.

14. The learned Special Public Prosecutor further contended that the witnesses in this case are posed with imminent danger of life for revealing the identity of these appellants. Around 15 witnesses have been already given protection as per the order passed by the trial court, based on their statements given to the Investigating Officer. However, it is only a matter of time before the appellants/accused persons get to know their identity from the evidence, they would tender before the trial Court. It will be a disaster for these witnesses, if their identity is revealed when the appellants/accused persons are on bail, as can be understood from the facts of this case. The judicial system of this country would be mocked by the appellants, in case they are let out on bail at this point of time.

15. The learned Special Public Prosecutor further contended that as per Section 43-D(6) of the Act, there is an embargo for granting bail as mentioned in Section 43-D(5) of the said Act, which is an additional restriction. Hence, apart from the normal rules for granting bail, in these types of cases, every Court must also consider the additional restrictions imposed by Section 43-D(5) of the said Act. Further, in this case, the bail application cannot be considered in a routine manner as may be found under any other statute.

16. The learned Special Public Prosecutor appearing for the respondent also submitted that the prosecution filed a petition in CrI.M.P.No.299 of 2019 before the trial Court for hiding the identity of 15 vital witnesses, who speak about the conspiracy and overt acts of the appellants/accused. After due consideration, the trial Court allowed the said CrI.M.P. on merits. The apprehension of the prosecution is that since the said protected witnesses are also living in the very same locality, there is every possibility of threat to the life of those witnesses, especially when these witnesses have to come forward and identify the appellants/accused persons during trial.

17. The learned Special Public Prosecutor further submitted that the gravity of the offences involved in this case is very serious in nature. The offences and the activities in which the appellants/accused had indulged, caused terror in the minds of people. The learned Special Public Prosecutor while touching upon the merits of the matter, relied on a decision of the Supreme Court reported in 2019 (5) SCC 1 (National Investigation Agency Vs. Zahoor Ahmad Shal Watali) and submitted that in the bail petitions filed by the appellants, they cannot raise the merits of the case and challenge the statement of the witnesses mentioned in the charge sheet.

18. The learned Special Public Prosecutor also stated that the delay in conducting trial in these types of cases, cannot be a ground for grant of bail to the accused persons. In this regard, he relied on a decision of the Supreme Court in the case of K.A.Najeeb Vs. State in CrI.A.No.1 of 2019 and CrI.A.No.659 of 2019. Thus, for the above reasons, the learned Special Public Prosecutor prayed for dismissal of the present appeals.

19. Heard both sides and perused the materials available on record.

20. Though very many contentions have been raised by either side on legal and factual aspects, the only question that has to be considered is as to whether bail could be granted to the appellants/accused persons at this stage.

21. The main submission of the learned counsel for the appellants is that the allegations against the appellants would show that it is only ordinary murder and there is no prima-facie case made out as against the accused persons to implicate them under the Unlawful Activities (Prevention) Act. Absolutely there is no material to connect them under Section 120-B IPC. As per the prosecution case, the deceased Ramalingam raised objections against the Dawah work, as poor and downtrodden people were being allegedly and forcibly converted to Muslim. Due to subsequent altercation by the accused persons with the deceased, the deceased had removed "Taqiyah" (religious skull cap) worn by A17 and wore it upon himself, besides he also applied "Thiruneer" (holy ash) on the forehead of A17 to emphasise that all religions are same. Thus, according to the learned counsel for the appellants, if we look into the allegations, absolutely there is no material to invoke the provisions of the Unlawful Activities (Prevention) Act against the accused.

22. On the other hand, according to prosecution, there are 15 hide-out witnesses, who speak about the conspiracy and overt acts of the appellants. The main apprehension of the prosecution is that as the protected witnesses are also living in the very same locality, there is every possibility of threat to the life of those witnesses, especially when the witnesses have to come forward and identify the appellants/accused persons during trial. The main objection of the prosecution is that if the appellants are released on bail, there is every likelihood of tampering with the witnesses, besides they will act as a threat to the witnesses. Moreover, the hide-out witnesses are to be examined.

23. We find some force in the contention of the learned Special Public Prosecutor appearing for the prosecution that if the appellants come out of imprisonment, there is likelihood of tampering with the witnesses, which will hamper trial. On a conspicuous scanning of the entire evidence on record, we are of the view that the apprehension of the prosecution that the protected witnesses will be bullied and made to testify differently, in the event of the accused being released on bail. This apprehension raised by the prosecution is plausible and reasonable. This is more so since the accused are also residing in the same locality and therefore, there is every possibility of the accused projecting a grudge against the witnesses. In

other words, the witnesses cannot freely and fearlessly testify before the trial court, which would render the justice delivery system a mockery. We find some force in the submission made by the learned Special Public Prosecutor that if bail is granted at this stage, it will seriously harm the trial before the trial Court. We are also not oblivious of the fact that bail is a rule and jail is an exception, as has been propounded by the Honourable Supreme Court in a catena of decisions. But, in the given nature of this case in respect of the crime alleged against the appellants, it is just and proper that the witnesses of the prosecution have to be permitted to testify before the trial court and thereafter, it will be open for the appellants/accused to seek for bail. However, at this stage, it is not desirable to grant bail to the appellants.

24. Much has been argued by the counsel for the appellants that the trial in the criminal case will consume much time, the appellants accused are languishing in jail for a considerable length of time and therefore, they have to be granted bail. We are unable to accept this submission. The nature of crime alleged to have been committed by the accused is such that the prosecution must be given adequate time to conduct the trial by examining several witnesses to prove the guilt of the accused. In this process, the trial may get protracted, however, it will not be a ground for this Court to grant bail to the accused.

25. The learned Special Public Prosecutor also relied on the decision of the Supreme Court in S.L.P.(Crl).Nos.011616 of 2019 which arise out of a similar case where the Kerala High Court granted bail to the accused on the ground that there was prolonged delay in commencing the trial. On appeal, by order dated 17.12.2019, the Honourable Supreme Court granted stay of the judgment of the Kerala High Court, holding that mere delay in conducting trial in a case under the Unlawful Activities (Prevention) Act does not take away the bar as enshrined under the said Act from granting bail in such cases. In fact, in the present case, the alleged occurrence took place on 06.02.2019, some of the accused were arrested on 06.02.2019, 09.02.2019, 10.02.2019 and 12.02.2019 and charge sheet was filed on 02.08.2019. While so, this Court is of the view that the delay in commencing the trial is not such that it would offend the constitutional right of the accused to get bail on the ground of delay. Therefore, this is not the stage where bail could be considered for the appellants.

26. Accordingly, the Criminal Appeals are dismissed. The trial Court is directed to examine the hide-out witnesses and record their evidence at the earliest, preferably on or before

30.06.2020. Further, on completion of examination of the hide-out witnesses, the appellants/accused persons are at liberty to approach the trial Court again for grant of bail.

Sd/-

Assistant Registrar (CCC)

/True Copy/

Sub Assistant Registrar

To

1. The Special Judge (under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee, Chennai-56.
2. The Special Public Prosecutor for NIA cases, High Court, Madras.
3. The Officer-in-Charge, Sub Jail, Poonamallee.
4. The Additional Superintendent of Police, National Investigation Agency, Kochi Branch.

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

+15cc to Mr.A.Raja Mohamed, Advocate,
Sr.Nos.21015,22045,22049,22046,22047 and 22048

AKM/19.03.2020 /18P-21C/

सत्यमेव जयते

Common Judgment in
CrI.A.No.852 of 2019 etc. batch

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