



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Fifth day of October Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

and

The Hon`ble Mrs Justice S. SRIMATHY

CRIMINAL MISCELLANEOUS PETITION 8616, 8617, 8618, 8620, 8622, 8623

and 8625 of 2021

in CRL.A. NO.853, 855, 862 TO 866 OF 2019

UNION OF INDIA [PETITIONER IN ALL THE PETITIONS]
REP.BY ADDITIONAL SUPERINTENDENT OF POLICE,
NATIONAL INVESTIGATION AGENCY, KOCHI.
(RC.NO.06/2019/NIA/DLI)

Vs

MOHAMED FARUK @ FARUK [RESPONDENT IN CRL.M.P.NO.8616/2021
IN CRL.A.No.862/2019]

MOHAMED THOUFIK @ MOHAMMED TOWFEEK
[RESPONDENT IN CRL.M.P.NO.8617/2021
IN CRL.A.No.865/2019]

THOWHEETH BATCHA @ TOWHEED BATCHA
[RESPONDENT IN CRL.M.P.NO.8618/2021]
IN CRL.A.No.863/2019]

SARBUDEEN [RESPONDENT IN CRL.M.P.NO.8620/2021]
IN CRL.A.No.855/2019]

MOHAMED FARVEES @ MOHAMMED PARVISH @ FARVEES,
[RESPONDENT IN CRL.M.P.NO.8622/2021]
IN CRL.A.No.864/2019]

S.MOHAMED RIYAS [RESPONDENT IN CRL.M.P.NO.8623/2021]
IN CRL.A.No.853/2019]

MYDEN AHMED SHALI @ SHALI [RESPONDENT IN CRL.M.P.NO.8625/2021]
IN CRL.A.No.866/2019]



Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased

(i) To extend the time passed by this Hon'ble Court in Crl.M.P.Nos.5631, 5636, 5637, 5638, 5639, 5641 & 5640 of 2020 in C.A.Nos.862, 865, 863, 855, 864, 853 & 866 of 2019 dated 21.09.2020 by another 6 months for examination of the Hidden Witness in C.C.No.2 of 2019 on the file of the Learned Special Judge for NIA Cases, Poonamallee, the pending disposal of the above Quash petition Crl.A.Nos.862, 865, 863, 855, 864, 853 & 866/2019. (CRL.M.P.Nos.8616, 8617, 8618, 8620, 8622, 8623 & 8625/2021)

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.R.KARTHIKEYAN, SPECIAL PUBLIC PROSECUTOR FOR NIA, for the petitioner [IN ALL THE PETITIONS] and of MR.ISAAC MOHANLAL, Senior Counsel [IN ALL THE PETITIONS] for M/S.S.A.S.ALAUDEEN, Advocate on behalf of the Respondent (Crl.M.P.No.8616 & 8625/2021 in Crl.A.Nos.862 & 866/2019, and of M/S.A.NOWFAL, Advocate on behalf of the (Crl.M.P.Nos.8617, 8618 & 8622/2021 in Crl.A.Nos.865, 863 & 864/2019) M/S.A.RAJA MOHAMMED, Advocate on behalf of the (Crl.M.P.No.8620 & 8623/2021 in Crl.A.Nos.855 & 853/2019, the court made the following order:-

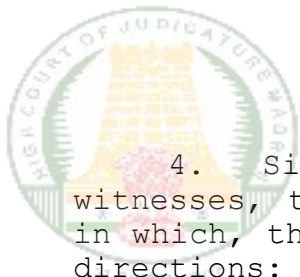
(Order of the Court was made by P.N.PRAKASH, J.)

These criminal miscellaneous petitions have been filed seeking to extend the time granted by this Court in Crl.M.P.Nos.5631, 5636, 5637, 5638, 5639, 5640 and 5641 of 2020 in Crl.A.Nos.862, 865, 863, 855, 864, 866 and 853 of 2019, by another 6 months for examination of the hidden witnesses in C.C.No.2 of 2019 on the file of the Special Court under the National Investigation Agency Act, 2008, (Sessions for Exclusive Trial of Bomb Blast Cases), Poonamallee.

2. The accused in this case are facing a prosecution in C.C.No.2 of 2019 before the Special Court under the National Investigation Agency Act, 2008, (Sessions for Exclusive Trial of Bomb Blast Cases), Poonamallee.

3. Earlier, the accused had filed bail petitions in the trial Court and on dismissal of the same, they had filed C.A.Nos.852 to 856 and 862 to 866 of 2019 before this Court, in which, this Court, by order dated 10.03.2020, dismissed the criminal appeals and issued the following directions to the trial Court:

"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."



4. Since the prosecution were not able to examine the hide-out witnesses, they filed miscellaneous petitions for extension of time, in which, this Court, by order dated 21.09.2020, issued the following directions:

"7.....

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Having regard to the above, we direct the trial Court to complete the examination of witnesses in the criminal case on or before 31.01.2021. If for any reason, the witnesses could not be examined or the trial is not completed before 31.01.2021, then the petitions for bail filed by the respondents/accused can be taken up by the trial court and disposed of on its own merits uninfluenced by any of the observations made by this Court in the above Criminal Appeals filed by the respondents/accused. Accordingly, these petitions are disposed of."(emphasis supplied)

5. While that being so, the National Investigation Agency has filed the present criminal miscellaneous petitions for further extension of time.

6. This Court called for a report from the trial Court and accordingly, the trial Court has sent a report dated 08.10.2021, wherein, it is stated as follows:

"I further submit that on 08.04.2021, A12-Mr.Mytheen Ahmed Shali had filed another application u/s 227 of Cr.P.C. and the same was taken on file in Cr1.M.P.No.152/2021 and the same was pending for enquiry.

I further submit that I have been transferred and posted as Judge of this Court on 15.06.2021 and I directed the other accused, to file petition u/s 227 of Cr.P.C., if really they are interested to file such petition, in order to avoid causing delay by the accused by filing petition after petition u/s 227 of Cr.P.C. After taking much efforts, the learned defence Counsel defending the case of A1 had filed a Memo on 26.08.2021 stating that A1 to A8 and A11 are not intending to file petition u/w 227 of Cr.P.C. Therefore, I directed the learned Counsel appearing in Cr1.M.P.No.152/2021 to argue the matter on 09.09.2021 and on that day, the learned defence Counsel has withdrawn the said application. In the meantime, the NIA has secured A11-Mr.Rahman Sadiq in the main case and produced before this Court on 03.08.2021 and he was detained under judicial custody and the split up case pending him is coming up for clubbing with the main case.

I further submit that now this Court is taking efforts to club the split-up case with regard to A11 along with the main case on 21.10.2021 and thereafter, this Court is inclined to frame charges against all the accused



and also intend to examine all the witnesses as per the direction of the Hon'ble High Court of Madras."

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7. As regards the prayer of the National Investigation Agency in these petitions for extension of time for examining hide-out witnesses, Mr. Isaac Mohanlal, learned Senior Counsel representing the learned counsel appearing for the respondents/accused submitted that, the prayer of the NIA has become redundant, inasmuch as, this Court, in the order dated 21.09.2020, has not stated that, on the failure of the prosecution to examine the witnesses before 31.01.2021, the accused would be entitled to discharge or that, they would be entitled to bail.

8. Thus, the learned Senior Counsel submitted that, the order dated 21.09.2020 is a self-working order and accordingly, the accused have also filed fresh bail petitions in the trial Court.

9. There appears to be sufficient force in the submission made by Mr. Isaac Mohanlal, learned Senior Counsel.

10. That apart, it is not desirable for this Court to issue directions to the trial Court to complete the trial within a fixed time period as there are about thirteen accused in this case and the trial Judge would have to manage his board accordingly.

11. It may be apposite to refer to the following passage from the judgment of the Supreme Court in **K.Vidya Sagar Vs. State of U.P. and Others**¹:

"13.....

The petitioner has submitted that the trial of the criminal case is not proceeding and the learned Magistrate has been giving long dates. For an expeditious hearing of the case every party must cooperate. It will not be proper for us to give any direction to the learned Magistrate regarding fixation of dates in the said criminal case as it depends upon the docket of the Court. Any direction for an out of turn hearing of a case has the effect of pushing some other case behind. However, it is directed that the learned Magistrate shall make all possible endeavour to decide the criminal case expeditiously. "

12. Hence, we direct the trial Court to examine the hide-out witnesses expeditiously after framing of charges.



With the above directions, these criminal miscellaneous petitions are ordered accordingly.

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-sd/-
25/10/2021

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

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

TO

1 THE SPECIAL JUDGE
(UNDER THE NATIONAL INVESTIGATION AGENCY ACT, 2008),
SESSIONS COURT FOR EXCLUSIVE TRIAL OF BOMB BLAST CASES, POONAMALLEE,
CHENNAI. (TRIAL COURT)

2 THE ADDITIONAL SUPERINTENDENT OF POLICE,
NATIONAL INVESTIGATION AGENCY,
KOCHI.

3 THE ADDITIONAL SUPERINTENDENT OF POLICE,
UNION OF INDIA,
NATIONAL INVESTIGATION AGENCY,
KOCHI.

4 THE OFFICER INCHARGE
SUB JAIL, POONAMALLEE.

5 THE SPECIAL PUBLIC PROSECUTOR
NATIONAL INVESTIGATION AGENCY,
MADRAS HIGH COURT,
CHENNAI-600 104.



Copy to:

THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S. R.KARTHIKEYAN SPL PP FOR Advocate on payment of
necessary charges

+6 CC to M/S.A.NOWFAL, Advocate on payment of necessary charges
SR.NO.11933, 11934, 11935

Order

in
Crl.M.P.Nos.8616, 8617, 8618, 8620, 8622, 8623 & 8625 of 2021
in
Crl.A.Nos.853, 855, 862 to 866 of 2019

Date :25/10/2021

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

TA-29/10/2021