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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:	05.08.2021
DELIVERED ON:	07.09.2021

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.A.NO.72 OF 2021
&
CRL.M.P.NO.1806 OF 2021

Chandra

...Appellant/Petitioner/Accused

VS.

The State represented by
the Deputy Superintendent of Police
"Q" Branch, CID
Dharmapuri.
(Cr. Nos.1004, 1005 & 1006 of 2002
on the file Uthangarai Police Station
and Cr.No.434 of 2002 on the file of
Kallavi Police Station)

...Respondent/Respondent/Complainant

Criminal Appeal preferred under Section 34 of the Prevention of Terrorism Act, 2002, challenging the order dated 22.01.2021 in CrI.M.P. No.165 of 2020 in Special C.C. No.5 of 2003 on the file of the Special Court under the Prevention of Terrorism Act, 2002 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai at Poonamallee, Chennai - 56, dismissing the bail plea.

For appellant : Mr. R. Sankarasubbu

For respondent : Mr. R. Muniyapparaj
Government Advocate (CrI. Side)



JUDGMENT

P.N. PRAKASH, J.

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This bail appeal has been preferred under Section 34 of the Prevention of Terrorism Act, 2002 (for brevity "the POTA"), challenging the order dated 22.01.2021 in bail petition being CrI.M.P. No.165 of 2020 in Special C.C. No.5 of 2003 that has been passed by the Special Court under the POTA, 2002 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai at Poonamallee, Chennai-56 (for brevity "the trial Court").

2. This bail appeal is the third one, the earlier appeals being CrI.A.No.695 of 2017 and CrI.A.No.426 of 2019 were dismissed by different Division Benches of this Court on 05.12.2017 and 10.03.2020, respectively.

3. The brief facts are as under :

3.1. Based on intelligence that Maoists are holding camps and giving training in arms to their cadres in Dharmapuri District, the police machinery beefed up their surveillance in that area. Based on secret information, the Naxalites Special Duty Wing, along with the local police, conducted four operations on 24.11.2002 and 25.11.2002, in which, there were exchanges of fire between the police and the Maoists at three places and four cases, viz., Uthangarai P.S. Cr.No.1004 of 2002, Uthangarai P.S. Cr. No.1005 of 2002, Uthangarai P.S. Cr.No.1006 of 2002 and Kallavi P.S.Cr. No.434 of 2002, for various offences under the Indian Penal Code, the Arms Act, the Explosives Act and the Explosive Substances Act, were registered against the cadres of People's War Group (PWG).

3.2. As regards Chandra, the appellant herein, she appears to have been involved in Uthangarai P.S. Cr.No.1005 of 2002 and Kallavi P.S. Cr.No.434 of 2002.

3.3. Since all the incidents covered under the four FIRs had taken place in the course of the same transaction, on the instructions of the Director General of Police, Tamil Nadu, in Chief Office Proceeding C.No.264932/Crimes II (2)/2002 dated 01.12.2002, all the four cases were transferred to the "Q" Branch CID, Coimbatore and the investigation was entrusted to the Deputy Superintendent of Police, "Q" Branch CID.



3.4. After completing the investigation, a single final report was filed on 19.05.2003 against 33 accused, including the appellant herein, for the offences under Sections 148, 333, 307, 333 read with 149 IPC, 307 read with 149 IPC, 120-B read with Section 3(2)(b) of the POTA, 25(1-B(a) of the Arms Act, 1959, and Sections 3(3), 3(5), 4(b) and 22(1) of the POTA, before the trial Court and the same was taken on file as Special C.C. No.5 of 2003.

3.5. Pertinent it is to state here that the appellant escaped during the operations in Uthangarai P.S.Cr.No.1005 of 2002 and Kallavi P.S. Cr.No.434 of 2002 and therefore, the police were unable to arrest her during the investigation. Out of 33 accused, the police were able to apprehend only 27 persons, and the others including the appellant, were in abscondence.

3.6. The trial Court issued a non bailable warrant against the appellant and later, issued proclamation under Section 82 Cr.P.C. The State Government, vide G.O. (Ms.) No. 21 dated 06.01.2015, announced a cash reward of Rs.2 lakhs to persons who may give useful information or render any help for apprehending the appellant. Further, special teams were also formed to apprehend her.

3.7. After a lapse of nearly 14 years, the appellant was arrested on 21.07.2016 in Karur along with a Maoist cadre Kala in a case in Karur "Q" Branch Cr.No.1 of 2016 under the Unlawful Activities (Prevention) Act, 1967. The appellant was produced before the trial Court in this case via a prisoner's transfer warrant on 16.08.2016 and was remanded in judicial custody.

3.8. The appellant filed two bail applications being CrI.M.P. No.360 of 2017 and CrI.M.P. No.153 of 2019 in the trial Court, which were dismissed vide orders dated 23.10.2017 and 24.06.2019 respectively, challenging which, she filed CrI.A. Nos.695 of 2017 and 426 of 2019 respectively and both were dismissed by detailed orders on 05.12.2017 and 10.03.2020, respectively.

4. Mr. R. Sankarasubbu, learned counsel for the appellant, placed strong reliance on the bail orders of the co-



accused, viz., Sundaramurthy and Ragini @ Bharathi in CrI.A. No.60 of 2012¹ and CrI.A. No.377 of 2014² respectively and submitted that on parity, the appellant also is entitled to be released on bail. He placed further reliance on the judgment of the Supreme Court in Shaheen Welfare Association vs. Union of India and others³ in support of his plea for bail to the appellant.

5. In our opinion, just because bail has been granted to the co-accused, that by itself, cannot be a ground for grant of bail to the appellant, in the light of the very recent judgment of the Supreme Court in Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana Makwana and another⁴. The relevant portion from the said judgment reads as under:

“Parity while granting bail must focus upon role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance.....”

6. Apart from bail applications followed by bail appeals being filed by the appellant, a habeas corpus petition being H.C.P. No.1643 of 2020 was filed by one Sengodi for the release of the appellant on the ground that her detention in the case is illegal. A Division Bench of this Court went into the allegations and closed the habeas corpus petition on 16.10.2020 holding that the appellant is not in illegal custody and that she can work out her remedies by filing appropriate petition before the jurisdictional Court.

7. When the trial Court proceeded to frame charges, the appellant filed CrI.M.P. No.540 of 2017 in Special C.C. No.5 of 2003 seeking discharge from the prosecution, which was dismissed by the trial Court on 12.06.2018. Thereagainst, she filed CrI.A. No.389 of 2018 before this Court and by a detailed order, a Division Bench of this Court dismissed the same on 18.02.2019.

¹ decided on 19.04.2012

² decided on 23.09.2014

³(1996) 2 SCC 616

⁴2021 SCC OnLine SC 335



8. In the earlier bail appeals that were dismissed by this Court in CrI.A.Nos.695 of 2017 and 426 of 2019, this Court has given cogent reasons for refusing bail to the appellant and there is no change in the fact situation for this Court to grant bail to her now.

9. Moreover, it appears that the appellant's brother Manivasagam was recently killed in an exchange of fire with the Kerala police and Maoists at Manjakandiyur, Palakkad District. This Court granted parole to the appellant to pay homage to her deceased brother.

10. It is alleged that while on parole, the appellant violated the parole conditions by addressing and inciting the Maoists cadres, detrimental to sovereignty of India and therefore, the police registered a case against her in Theevattipatti P.S.Cr.No.14 of 2020 under Section 188, 120-B, 121, 121-A and 124-A IPC and Sections 10, 13, 15 and 18 of the Unlawful Activities (Prevention) Act, 1967. Thus, it is the apprehension of the police that if bail is granted to the appellant, she will once again abscond and involve herself in Maoist activities.

11. We find sufficient force in the apprehension of the State. Though default bail under Section 167(2) Cr.P.C. has been granted to the appellant in some of the pending cases, overwhelming prima facie materials are available to show that if bail is granted to her in this case, she would jump bail.

12. Ragini @ Bharathi, a co-accused, was granted bail by this Court vide judgment dated 23.09.2014 in CrI.A. No.377 of 2014 on the short ground that her husband Duraisingavel, who was earlier granted bail, was appearing before the trial Court regularly. However, that is not the case with the appellant. She was in abscondence for 14 long years and with great difficulty, she was apprehended by the police in another case on 21.07.2016, as stated above.

13. Mr. Sankarasubbu contended that the appellant is entitled to be released on bail as there has not been any progress of the case in the trial Court. Very often, we find this charge being leveled against the judiciary to earn public



sympathy for the ideologues arrested in such cases. But, seldom does anyone ponder over the true reasons for the delay in the trial of such cases. People belonging to an ideological group would loathe to submit themselves to the process of the Court and instead, would adopt every possible tactic under the sun to stall the trial and later, cry foul from the roof top that they have been kept under incarceration for long periods. In this case, at the time of framing charges, the appellant filed an application being CrI.M.P. No.540 of 2017 for discharge and after suffering dismissal on 12.06.2018, she preferred an appeal in CrI.A. No.389 of 2018 in this Court and thereby, kept the trial pending till the appeal was eventually dismissed by this Court on 18.02.2019.

14. Further, it is seen from the trial Court records that when the date was fixed for commencement of the trial, all the counsel withdrew their appearance and the accused filed a petition under Section 304 Cr.P.C. giving a list of Senior Advocates to be appointed by the Court to defend them. In fact, they even refused to accept the legal aid provided by the Court under the Legal Services Authority Act and on this ground, they are keeping the trial pending.

15. It is pertinent to point out that the co-accused Ragini @ Bharathi and Sundaramurthy have filed writ petitions being W.P. Nos.1377 of 2016 and 36989 of 2016 respectively, contending that a Review Committee has to be constituted to consider their case for release under the POTA and citing the pendency of the said writ petitions, they are not permitting the trial Court to proceed with the trial. In fact, a Review Committee headed by Justice Usha Mehra and 2 others, viz., M/s. K. Roy Paul and R.C. Jha was constituted by the Central Government under Section 60 of the POTA, which went into the case in hand and submitted a report dated 02.02.2005 holding that they did not find prima facie misuse of the provisions of the POTA, except insofar as the case of one Murugesan.

16. We are of the view that had the appellant permitted the trial Court to proceed with the trial without putting spokes, then, it would have been possible for us to consider granting the relief of bail on the ground of change of circumstances aftermath the dismissal of the last bail appeal in CrI.A. No.426 of 2019. That apart, had the prosecution been



permitted to examine some witnesses, then, we would have had an opportunity to go through the evidence to see if continued detention of the appellant is warranted. In one breath, these ideologues stall the trial and in the same breath, they cry hoarse that they are languishing as undertrials. They cannot be heard to say that they do not have faith in the trial Court, but, at the same time, would want the superior Courts to be munificent to them by granting bail. One cannot run with the hare and hunt with the hound. In our opinion, granting bail to persons who adopt dilatory tactics in the trial Court is tantamount to encouraging their activities at the cost of demoralizing the trial Courts.

For all the foregoing reasons, this Court finds no merit in this bail appeal and as a sequitur, this bail appeal stands dismissed. Connected CrI.M.P. stands closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

cad

To

1. The Deputy Superintendent of Police
"Q" Branch, CID
Dharmapuri
2. The Special Judge under the POTA
(Sessions Judge for Exclusive Trial of Bomb Blast Cases)
Poonamallee, Chennai - 56.
3. The Superintendent,
Special Prison for Women
Trichy.
4. The Public Prosecutor
High Court of Madras
Chennai 600 104.



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The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.A.No.72 of 2021

JP-II(CO)
RLP(23/09/2021)