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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.06.2021

PRONOUNCED ON : 28.06.2021

C O R A M:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

and

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal Nos.272 and 275 of 2021

Union of India represented by
the Inspector of Police
National Investigation Agency
Chennai

[RC No.07/2021 of P.S. NIA New Delhi]

Appellant/Complainant
in both appeals

vs.

Vivekanandan @ Vivek (A-I)

Respondent/Accused
in both appeals

Prayer in CrI.A.No.272 of 2021:

Criminal Appeal preferred under Section 21 of the National Investigation Agency Act, to set aside the order dated 05.05.2021 passed in CrI.M.P.No.168 of 2021 on the file of the learned Special Judge for NIA Act Cases, Poonamallee and cancel the Bail granted to the Respondent herein.

Prayer in CrI.A.No.275 of 2021:

Criminal Appeal preferred under Section 21 of the National Investigation Agency Act, to set aside the order passed in CrI.M.P.No.181 of 2021 on the file of the learned Special Judge for NIA Cases, Poonamallee dated 05.05.2021 and cancel the bail granted to the respondent.

For appellant : Mr.R.Karthikeyan
in both cases Spl.Public Prosecutor for
NIA Cases

For respondent : Mr.R.Sankarasubbu
in both cases



COMMON JUDGMENT

R. PONGIAPPAN, J.

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Calling into question the legality and validity of the two orders, both dated 05.05.2021, passed by the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai at Poonamallee (for brevity "the Special Court at Poonamallee") in CrI.M.P.Nos.168 and 181 of 2021, in and by which, the prayer for police custody of the respondent (Vivek/A.1) has been rejected and bail has been granted to him, respectively, the Inspector of Police, National Investigating Agency, Chennai, has filed these two criminal appeals.

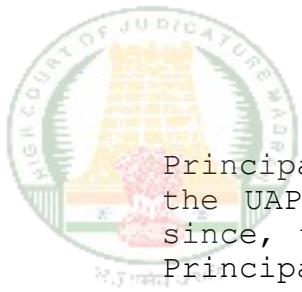
2 The legal issue raised by the National Investigating Agency in these two criminal appeals lies in a very narrow compass, to decide which, it may be necessary to refer to a few dates and events.

2.1 Vivekanandan @ Vivek (A.1)/respondent allegedly uploaded an offensive post in his Facebook account, for which, the Inspector of Police, Thallakulam Police Station, Madurai, registered a case in Cr.No.1916/2020 for the offences under Section 13(1)(b) of the Unlawful Activities (Prevention) Act, 1967 (for short "the UAP Act") and Section 505(1)(b) IPC against Vivek (A.1) and arrested him on 16.12.2020, produced him before the Judicial Magistrate No.II, Madurai, who remanded him in custody. Seemingly, the Judicial Magistrate No.II, Madurai, has been placing Vivek (A.1) in judicial remand from time to time under Section 167(2) Cr.P.C.

2.2 For the offences alleged in the FIR, the time period prescribed for default bail under Section 167 Cr.P.C. is 90 days and accordingly, the 90th day fell on 15.03.2021. While that being so, by order dated 12.03.2021 of the Central Government, the investigation of the case in Thallakulam P.S. Cr.No.1916 of 2020 was entrusted to the National Investigating Agency (for short "the NIA") and the NIA re-registered the case on 14.03.2021 as RC/07/2021/NIA/DLI in accordance with their procedure under Section 13(1)(b) of the UAP Act and Section 505(1)(b) IPC. However, the Inspector of Police, Thallakulam Police Station was proceeding with the investigation of the case in terms of Section 6(7) and 10 of the NIA Act.

2.3 Seemingly, another FIR in Cr.No.2594 of 2020 was registered against Vivek (A.1) in which he was arrested by the State police and was being remanded in custody from time to time.

2.4 On 15.03.2021, the Public Prosecutor representing the Thallakulam police, filed an application before the



Principal Sessions Court, Madurai, under Section 43(D)(2) of the UAP Act in Cr.No.1916 of 2020 and Cr. No.2594 of 2020, since, under the UAP Act, the trial Court is the Court of the Principal District and Sessions Judge.

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2.5 It may be pertinent to state here that Vivek (A.1) was being remanded from time to time in Cr.No.1916 of 2020 by the Judicial Magistrate No.II, Madurai, whereas, the Public Prosecutor representing the local police had filed an application under Section 43(D)(2) of the UAP Act for remand extension beyond 90 days before the Principal District Court, Madurai, where, the records of the case itself were not available.

2.6 For both the cases, viz., Cr. 1916 of 2020 and Cr. No. 2594 of 2020, the Public Prosecutor filed a common petition under Section 43(D)(2)(b) of the UAP Act for extension of period of remand from 90 days to 180 days.

2.7 The Principal District Judge, Madurai, returned the petition on the ground that individual reports should be filed by the Public Prosecutor under Section 43(D)(2)(b) of the UAP Act for each crime number.

2.8 Accordingly, on 16.03.2021, the Public Prosecutor filed two petitions (reports) under Section 43(D)(2)(b), in which, notice was ordered on Vivek (A.1). It is alleged that Vivek (A.1) refused to receive the notice in the prison when the police tried to serve it on him and therefore, it was returned with the endorsement that he refused to receive it.

2.9 Since charge sheet was not filed either by the State police or by the NIA on or before 15.03.2021, Vivek (A.1) filed a petition for default bail under Section 167(2) Cr.P.C. before the Judicial Magistrate No.II, Madurai, who returned the petition on the ground that the case has been transferred to the NIA.

2.10 The petition that was filed by the Public Prosecutor for the local police before the Principal Sessions Court, Madurai under Section 43(D)(2)(b) of the UAP Act in Thallakulam P.S. Cr.No.1916 of 2021, seeking extension of remand period from 90 days to 180 days, was taken on file as CrI.M.P. No.1924 of 2021 and the same was allowed vide order dated 19.03.2021.

2.11 In the State of Tamil Nadu, the Sessions Court for Bomb Blast Cases in Poonamallee has been designated as the Special Court under the NIA Act. Therefore, the records in Thallakulam P.S.Cr.No.1916 of 2021 were transferred from the Court of the Judicial Magistrate No.II, Madurai, to the file



of the Special Court at Poonamallee on 08.04.2021. Further, the remand proceedings of Vivek (A.1) was also transferred from the file of the Judicial Magistrate No.II, Madurai, to the Special Court at Poonamallee.

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2.12 Before the Special Court at Poonamallee, the NIA filed an application on 20.04.2021 for police custody of Vivek (A.1) under Section 167 Cr.P.C., which was taken on file as Crl.M.P. No.168 of 2021.

2.13 Vivek (A.1) also filed an application under Section 167(2) Cr.P.C. on 26.04.2021 in the Special Court at Poonamallee, which was taken on file as Crl.M.P. No.181 of 2021, in which, he submitted that the period of 90 days had expired on 15.03.2021 itself; he filed a bail application on 17.03.2021 before the Judicial Magistrate No.II, Madurai, where he was being remanded from time to time, but, the Magistrate did not pass any orders on the ground that the case was transferred to the NIA, thereby depriving him of his indefeasible right to be released on bail.

2.14 The Special Court at Poonamallee heard Crl.M.P. No.181 of 2021 filed by Vivek (A.1) seeking bail and Crl.M.P. No.168 of 2021 filed by NIA seeking police custody and passed two separate orders on 05.05.2021 granting bail to Vivek (A.1) and dismissing the police custody application filed by the NIA on the ground that bail has been granted to Vivek (A.1).

2.15 While Crl.A. No. 275 of 2021 has been filed against the order dated 05.05.2021 passed in Crl.M.P. No.181 of 2021, Crl.A.No.272 of 2021 has been filed against the order dated 05.05.2021 passed in Crl.M.P. No.168 of 2021.

3.Heard Mr.R.Karthikeyan, learned Special Public Prosecutor for NIA Act cases, appearing for the appellant and Mr.R.Sankarasubbu, learned counsel appearing for Vivek (A.1).

4.The power of the Court to grant police custody beyond the period of 15 days in a case investigated by the NIA for the offences under the UAP Act is no more res integra in the light of the authoritative pronouncement of the Supreme Court in Maulavi Hussein Haji Abraham Umarji vs. State of Gujarat and another¹. Therefore, the limitations prescribed in C.B.I., Special Investigation Cell-I, New Delhi vs. Anupam J. Kulkarni² will not apply to a case investigated by the NIA for the offences under the UAP Act.

¹ (2004) 6 SCC 672
² (1992) 3 SCC 141



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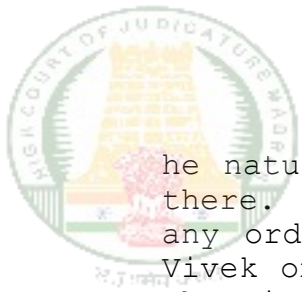
5. Now, the question that falls for consideration of this Court is whether the grant of statutory bail to Vivek (A.1) was proper and legal.

6. Mr. Karthikeyan, learned counsel for the appellant, placed strong reliance on the judgment of the Supreme Court in *Rambeer Shokeen vs. State (NCT of Delhi)*³ wherein, the Supreme Court has held that unless the prayer for extension of remand period is rejected, no right would accrue in favour of the accused for grant of statutory bail. In other words, the Supreme Court has held that during the pendency of the consideration of the request of the Public Prosecutor under Section 43(D)(2) of the UAP Act, the accused cannot be enlarged on statutory bail. The corollary of it is that if the application of the Public Prosecutor is rejected, the accused would be entitled to statutory bail.

7 In our considered opinion, on the facts of the case at hand, the law laid down in *Rambeer Shokeen* (supra) cannot be pressed into service by the NIA, since the application under Section 43(D)(2) of the UAP Act was filed only on 16.03.2021, which is after the expiry of the 90th day. The law laid down in *Rambeer Shokeen* (supra) will come to the aid of a diligent police officer and Public Prosecutor who approach the jurisdictional Special Court with the request for extension of the remand period by filing in time the report under Section 43(D)(2) of the UAP Act. In this case, we find that there was absolutely no diligence at all. Vivek (A.1) was being remanded by the Judicial Magistrate No.II, Madurai, from time to time even after the authoritative pronouncement dated 12.10.2020 of the Supreme Court in *Bikramjit Singh vs. State of Punjab*⁴. The State should have ensured that Vivek (A.1) was being produced before the Principal District and Sessions Court, Madurai, for remand. Unfortunately, they did not do that. However, the Public Prosecutor had approached the Principal District and Sessions Court, Madurai, with a manifestly defective report under Section 43(D)(2) of the UAP Act by combining two crime numbers. This shows how the State had acted in a cavalier manner for extinguishing the statutory right of a prisoner to be released on default bail under Section 167(2) Cr.P.C. The Public Prosecutor presented his report only on 16.03.2021 and that too before the Principal District and Sessions Court, Madurai, when the case had already been transferred to the NIA as early as 12.03.2021. Vivek (A.1) became entitled to default bail on 15.03.2021 as charge sheet was not filed by then. Since Vivek (A.1) was being produced before the Judicial Magistrate No.II, Madurai,

³ (2018) 4 SCC 405

⁴ (2020) 10 SCC 616



he naturally filed the default bail application on 17.03.2021 there. The Judicial Magistrate No.II, Madurai did not pass any orders on the default bail application that was filed by Vivek on 17.03.2021 on the ground that the NIA has taken over the investigation of the case. Strangely, the Principal Sessions Judge, Madurai, passed an order on 19.03.2021 extending the remand period to 180 days, ignoring the fact that his Court was not the designated Special Court under the NIA Act. Apposite it would be refer to the following passage from the judgment of the Supreme Court in Hitendra Vishnu Thakur vs. State of Maharashtra⁵ on the sanctity of the report of the Public Prosecutor:

"23.The use of the expression "on the report of the public prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20 (4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb)....." (emphasis supplied)

8 In such view of the matter, the judgment of the Supreme Court in Rambeer Shokeen (supra) will not come to the aid of the appellant and therefore, we do not find any infirmity in the order dated 05.05.2021 passed by the Special Court at Poonamallee in CrI.M.P. No.181 of 2021 granting bail to Vivek (A.1). As a sequel, CrI.A. No.275 of 2021 is dismissed.

9 Since the order of the Special Court at Poonamallee granting bail to Vivek (A.1) is upheld, axiomatically, police custody cannot be ordered. As a sequitur, CrI.A.No.272 of 2021 also stands dismissed.

To sum up, both the criminal appeals are dismissed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1 The Special Judge for NIA Act Cases
Poonamallee

2 The Inspector of Police
National Investigation Agency
Chennai

3 The Public Prosecutor
High Court
Madras

Copy to:

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

Common judgment in
Crl. A. Nos.272 and 275 of 2021

R.K. (CO)
K.RK. (19.07.2021)