

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2021
PRONOUNCED ON : 25.02.2021
CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE V.SIVAGNANAM

CRL.A.No.299 of 2019
and CRL.M.P.No.6791 of 2019

1.Mohamed Azarudeen
2.Mohamed Riyas
3.Nijam Ali
4.Sarbudeen
5.Mohamed Rishwan
6.Mohamed Thowfik
7.Mohamed Parvish
8.Thowqeeth Batcha
9.Mohamed Ibrahim
10.Mohamed Hassan Kuthous

... Appellants/ Accused 1 to 10

Vs.

Union of India rep. by
The Additional Superintendent of Police
National Investigation Agency
Kochi
(RC.No.06/2019/NIA/DLI)

.. Respondent/Complainant

Criminal Appeal filed under Section 21 of the National Investigation Agency Act, 2008, to call for the entire records in connection with impugned further remand extension order passed by the learned Special Judge for NIA cases/Sessions Court for Exclusive Trial for Bomb Blast Cases, Poonamallee, Chennai in Crl.M.P.No.191 of 2019 dated 06.05.2019 in R.C.No.06/2019/NIA/DLI and set aside the same

For Appellants : Mr.I.Abdul Basith

For Respondent : Mr.R.Karthikeyan
Spl. Public Prosecutor for NIA cases

J U D G M E N T

P.N.PRAKASH, J.

The point for consideration in this Criminal Appeal is, the validity of the report dated 29.04.2019, submitted by the Special Public Prosecutor under Section 43-D(2)(b) of the Unlawful Activities (Prevention) Act, 1967 (in short "the UAP Act") and the consequent acceptance of the same by the Special Court vide the impugned order in CrI.M.P.No.191 of 2019 dated 06.05.2019.

2. One Ramalingam was brutally attacked on 05.12.2019 in Thiruvidaimarudur by an unlawful assembly, resulting in the local police registering a case in Thiruvidaimarudur P.S.Crime No.17 of 2019 under Sections 341, 294(b) and 307 IPC. After Ramalingam succumbed to the injuries, the case was altered to one under Section 302 IPC.

3. During the course of investigation, it came to light that Ramalingam was a Hindu activist and he was fatally attacked by Muslim fanatics. The Investigating Officer incorporated the penal provisions of the UAP Act in the case and the Central Government issued a direction under Section 6(4) read with Section 8 of the National Investigation Agency Act, 2008, transferring the case to the file of the National Investigation Agency (NIA), New Delhi. The case was re-registered as R.C.No.06/2019/NIA/DLI on 07.03.2019 and the NIA took up the investigation of the case on 25.04.2019.

4. In the meanwhile, the accused in this case were arrested on various dates. The 90 days period for default bail prescribed under Section 167 Cr.P.C. for some of the arrested accused was to expire on 06.05.2019. Therefore, the Special Public Prosecutor filed a report dated 29.04.2019 under Section 43-D(2)(b) of the UAP Act, for extending the period of judicial custody. The accused also filed their counter to the report of the Special Public Prosecutor.

5. After hearing either side, the Special Court vide impugned order dated 06.05.2019, accepted the request of the Special Public Prosecutor and extended the remand period beyond 90 days. This is under challenge by the accused in this appeal.

6. Heard Mr.I.Abdul Basith, learned counsel for the appellants and Mr.R.Karthikeyan, learned Special Public Prosecutor for the respondent.

7. Mr.Abdul Basith made the following submissions :

- (a) That the report of the Special Public Prosecutor under Section 43(D)(2) of the UAP Act did not substantiate the progress of the investigation and it is based on assumptions and casual assertions without anything more.
- (b) There are 10 accused in the case who have been remanded to judicial custody. The report of the Special Public Prosecutor ought to have covered the case of each of the accused to justify his further detention beyond 90 days.
- (c) Though the investigation was transferred to the NIA on 07.03.2019, the actual investigation began only on 24.03.2019 by the NIA and this delay cannot be put against the accused.
- (d) Strong reliance was placed on the judgment of the Supreme Court in *Bikramjit Singh Vs. The State of Punjab* [(2020) 10 SCC 616], wherein, the Supreme Court has held the importance of the right to default bail guaranteed by Section 167(2) Cr.P.C.
- (e) The Special Public Prosecutor ought not to have filed the report seeking extension of judicial custody before the expiry of 90 days.

8. Per contra, Mr.Karthikeyan refuted the aforesaid contentions and placed strong reliance on the judgments of the Supreme Court in *State of Maharashtra Vs. Surendra Pundlik Gadling and Others* [(2019) 5 SCC 178] and *State by the Superintendent of Police, NIA, Kochi Vs. Shakul Hameed* [(2019) 6 SCC 350].

9. This Court gave its anxious consideration to the rival submissions.

10. Admittedly, in this case, charge sheet has been filed on 02.08.2019, much before the expiry of 180 days and the case has been taken on file as C.C.No.2 of 2019 by the Special Court, Poonamallee, where the appellants are facing trial. The fact that the Special Public Prosecutor in charge of the case had submitted the report under Section 43(D)(2) of the UAP Act to the Special Court on 29.04.2019 is not in dispute. A perusal of the report shows that, it runs to 9 pages. Paragraphs 18, 19 and 20 of the report read as under :

"18.It is further submitted that, the investigation already collected the electronic gadgets. The details found in the electronic gadgets have to be analyzed and if any deletion of messages or images or any other communication of the electronic gadgets has to be retrieved from which were seized from the possession of the accused persons, are to be

obtained. After analysing gadgets, the accused persons have to be questioned further and therefore, it may need for further custodial interrogation of accused persons to ascertain facts already collected during the course of investigation. Therefore, the investigation is needed to be continued beyond 90 days.

19. It is further submitted that, the analysis report of CCTV footages, call data records (CDRs) and electronic devices is very much required for the proper investigation to unearth the larger conspiracy behind the crime. The involvements of other accused who were absconding and nexus between themselves and their movements and their communications has to be investigated. Therefore, the investigation is needed to be continued beyond 90 days.

20. The investigation revealed that the accused persons had hatched criminal conspiracy, recruited persons, collected weapons, collected vehicles etc. for committing the terrorist act and acted themselves as a terrorist gang. Moreover, the statements of witnesses as well as the confession of the accused persons is revealing that they were in the promotion of 'Jihadi' activities which has to be probed further during the course of investigation. Therefore, the investigation is needed to be continued beyond 90 days."

11. Mr. Abdul Basith contended that when the CCTV footages have been collected, there is no further necessity to have them analysed. We are unable to agree with the aforesaid submission because, mere seizure of the CCTV footages is not sufficient and the investigating agency should have to intensely view them, in order to collect further evidence to exclude the possibility of innocent persons being prosecuted. That is why, in paragraph 18 of the report, the Special Public Prosecutor has stated that the NIA has to analyse the gadgets in order to find out, if there has been any deletion of images or messages or any other communication from the already collected materials. Further, in paragraph 12 of the said report, the learned Special Public Prosecutor has stated that a Swift Desire car has been seized and that, A-11 to A-16 are in abscondence, on account of which, witnesses are not coming forward freely to share information with NIA.

12. As regards the contention of Mr. Abdul Basith that the learned Special Public Prosecutor ought not to have filed the report before the expiry of 90 days, we find no merit in it.

The law does not say that the Public Prosecutor should file the special report only on the 90th day. When the Public Prosecutor, after discussions with the Investigating Officer, comes to the opinion that the investigation cannot be concluded before the 90th day, he may very well file the special report earlier. However, in this case, the report was taken for consideration by the Special Court and orders were passed only on 06.05.2019.

13. In Surendra Pundlik Gadling (supra), the 90 days period was to end on 03.09.2018, but, the report was filed by the Investigating Officer and the Special Public Prosecutor on 30.08.2018. The report was taken up for consideration by the Special Court on 02.09.2018 and orders were passed thereon. As in the present case, the Special Public Prosecutor in Surendra Pundlik Gadling (supra) has stated in his report as follows :

"(c) That there is a voluminous data in the said electronic record which requires to investigate in order to ascertain the implementation of these unlawful activities not only in the State of Maharashtra, but in other States also and all over India."

14. The contention of Mr.Abdul Basith that the report should cover the case of each accused, we are afraid, cannot be countenanced for the reason that, in a case of conspiracy, as in the present case, the investigation has to proceed simultaneously as against all the accused and also against those whose involvement may come to light subsequently. That apart, Section 43(D) (2) of the UAP Act does not call upon the Public Prosecutor to submit his report qua each accused. The said provision casts a duty on the Public Prosecutor to apply his mind on the investigation done that far and thereafter, find out if there are sufficient cause for seeking extension of time under Section 43(D) (2) of the UAP Act.

15. As regards the submission of Mr.Abdul Basith that the delay in taking over the investigation by the NIA should not have been put against the accused, we find that the case was initially investigated by the State Police agency and during their investigation, it came to light that there were communal overtones warranting investigation by the NIA, the Central Government intervened and directed the transfer of the investigation to the NIA. When the NIA Act, 2008, provides for such transfers, factors like administrative delay in effecting the actual transfer of the files from one agency to the other and the delay due to that, cannot enure to the advantage of the accused. Otherwise, the very purpose of ordering an investigation by the NIA would stand defeated.

In the result, we do not find any infirmity either in the report dated 29.04.2019 filed by the Special Public Prosecutor or in the impugned order dated 06.05.2019 passed by the Special

Court for NIA cases (Sessions Court for Exclusive Trial for Bomb Blast Cases), Poonamallee, in Crl.M.P.No.191 of 2019 in R.C.No.06/2019/NIA/DLI, warranting interference and accordingly, this Criminal Appeal stands dismissed. Connected Crl.M.P is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Special Judge for NIA cases
(Sessions Court for Exclusive Trial for Bomb Blast Cases)
Poonamallee, Chennai

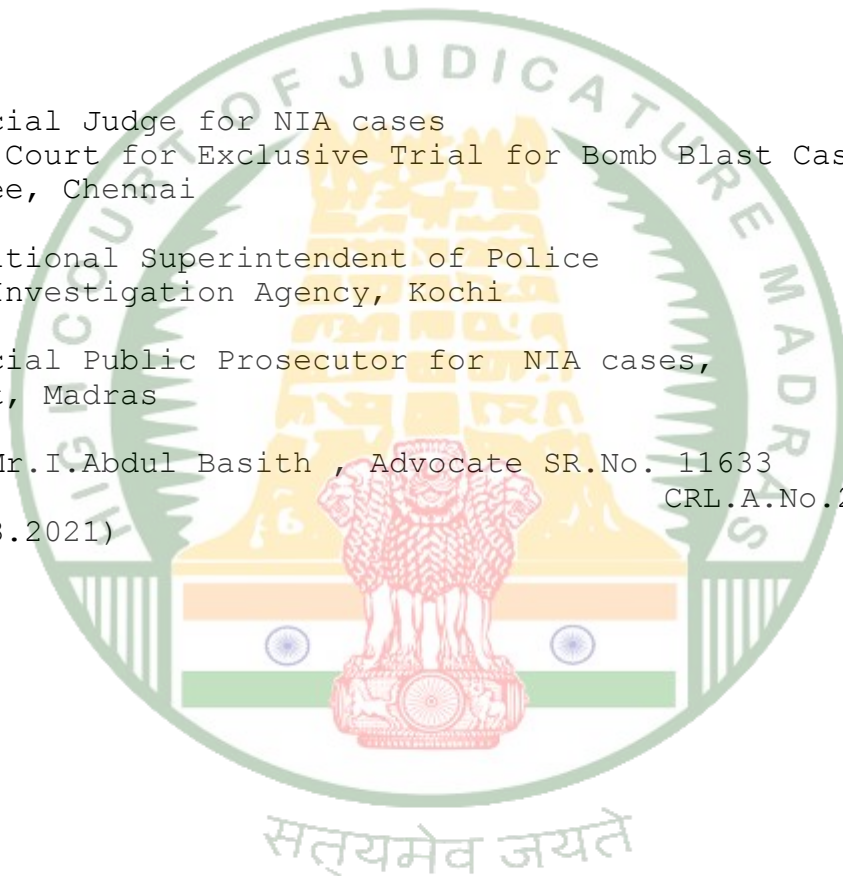
2.The Additional Superintendent of Police
National Investigation Agency, Kochi

3.The Special Public Prosecutor for NIA cases,
High Court, Madras

+5ccs to Mr.I.Abdul Basith , Advocate SR.No. 11633

CRL.A.No.299 of 2019

A.SK(18.03.2021)



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