

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2021

PRONOUNCED ON: 17.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.517 of 2020

Sathiya Mary @ Padma ... Appellant /Petitioner/
Accused

Vs.

State represented by
Deputy Superintendent of Police,
'Q' Branch CID,
Dharmapuri. Uthangarai Police Station,
(Crime No.1004/2002, 1005/2002, 1006/2002
and Kallavai police station,
(Crime No.434 of 2002)

... Respondent/Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 34 of POTA Act to set aside the impugned judgement and order in Crl.M.P.No.29 of 2020 dated 28.10.2020 on the file of the Special Court for POTA Offences and Sessions Judge, Exclusive trial court of Bomb blast cases at Poonamallee, Chennai and enlarge the appellant on bail, pending trial in C.C.No.5 of 2003 on the file of Special Court under POTA Act and Sessions Judge Court for Exclusive trial of Bomb blast cases at Poonamallee, Chennai.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

JUDGMENT

(V.SIVAGNANAM, J.,)

The Criminal Appeal has been directed as against the Judgement and order in Crl.M.P.No.29 of 2020 dated 28.10.2020 on the file of the Special Court under the Prevention of Terrorism Act (POTA), 2002 (Sessions Court for Exclusive Trial of Bomb Blast Cases) at Poonamallee, Chennai, (for short "The Special

Court") and to enlarge the appellant on bail, pending trial in C.C.No.5 of 2003 on the file of the Special Court.

2.The appellant, who was arrayed as an accused in C.C.No.5 of 2013 before the Special Court, for the offences punishable under Sections 148, 333, 307, 333 r/w 149 of IPC, 307 r/w 149 of IPC and Section 120-B of IPC r/w 3(2)(b) of the Prevention of Terrorism Act, 2002, (for short "The POTA") Section 25(1B) of Arms Act 1959 and Section 3(3), 3(5), 4(b), 22(1) of the Prevention of Terrorism Act, was arrested on 24.11.2002.

3.The learned counsel for the appellant would submit that the appellant is a woman, aged about 47 years and suffering from heart disease; further, she has been in jail for more than 5 years and this alone is sufficient to grant bail to her; no serious charges were levelled against the appellant; however, the Q Branch CID Coimbatore, police arrested the appellant on 24.11.2002, at Onnakarai forest area of Dharmapuri District; the trial Court without considering the health issues of the appellant and also without humanitarian consideration, mechanically dismissed the bail petition and hence, the order of the trial Court has to be set aside.

4.The learned Additional Public Prosecutor appearing for the State opposed to grant bail to the appellant and further submitted that during the arrest of the appellant on 24.11.2002, 2 PVC pipe bombs were recovered from her along with her personal belongings; the appellant was granted bail earlier in CrI.A.No.335 of 2004 by an order dated 28.04.2005; thereafter, the appellant, without complying the conditions mentioned in CrI.A.No.335 of 2004 absconded from 23.12.2009 onwards and thus Non Bailable Warrant was issued against her on 13.07.2012; further, surety action petition under Section 446(A) of Cr.P.C., was also filed on 01.07.2014 in CrI.M.P.No.290 of 2014 and bail cancellation petition was filed before this Court in Cr.M.P.No.3631 of 2016 to cancel the bail granted to the appellant; therefore, by an order dated 20.01.2017, this Court cancelled the bail; thereafter, the trial Court again issued a fresh Non Bailable Warrant on 10.02.2017; suddenly, on 07.12.2018, the appellant surrendered before the trial Court and she was remanded to judicial custody, if the appellant was released on bail, there is a possibility of absconding and she may evade the trial of the case. The learned Additional Public Prosecutor further submitted that the appellant refused to cooperate for medical treatment provided to her during the time of her imprisonment and she picked up quarrel with the officials in Jail; therefore, the appellant is not entitled to bail on the medical ground.

5.Heard Mr.R.Sankarasubbu, learned counsel for the appellant and Mr.K.Prabakar, learned Additional Public

Prosecutor appearing for the respondent/State and perused the materials on record.

6. On perusal of materials on record, the following facts come to light:

(i) The appellant/accused was arrested on 24.11.2002 at Onnakarai forest area of Dharmapuri District and a case in Crime No.1006 of 2002 was registered in Uthangarai Police Station. After investigation by the Deputy Superintendent of Police, Q Branch CID, Coimbatore, a final report was filed on 19.05.2003 under Sections 148, 333, 307, 333 r/w 149 of IPC, 307 r/w 149 IPC and Section 120-B IPC r/w 3(2)(b) of the POTA, Section 25 (1B) (a) of Arms Act 1959 and Section 3(3), 3(5), 4(b), 22(1) of the POTA.

(ii) The appellant filed a bail application in CrI.M.P.No.103 of 2003 before the Special Court, and the same was dismissed on 06.02.2004. Thereafter, the appellant filed a CrI.A.No.335 of 2004, in which bail was granted on 28.04.2005 with certain conditions. The appellant by disobeying the conditions imposed by this Court, did not appear before the trial Court and hence Non Bailable Warrant was issued against the appellant on 13.07.2012. In continuation of Non Bailable Warrant, surety action petition under Section 446(A) of Cr.P.C., was taken and bail granted to the appellant was cancelled by the order of this Court dated 20.01.2017 in CrI.M.P.No.3631 of 2016. Following that, Proclamation proceedings were initiated against the appellant under Section 82 of Cr.P.C., to secure the appellant/accused and to proceed with the trial.

(iii) Thereafter, all of a sudden, the appellant surrendered before the trial Court on 07.12.2018 to recall the Non Bailable Warrant issued against her. Further, she explained her absence before the trial Court, stating that she was suffering from heart disease. With due consideration to the submissions made on either side, the trial Court dismissed the bail petition on 20.12.2018.

(iv) Aggrieved by the order of dismissal dated 03.04.2019 in C.A.No.870 of 2018, the appellant has preferred the present Criminal Appeal.

7. We have carefully considered the submissions of the learned counsel for the parties. The above said facts are not disputed by the parties. Now, the learned counsel for the appellant presses for bail, on the ground that the appellant/accused has been in jail for more than 5 years; apart from this, she is suffering from heart disease and unable to move without the help of others. This contention is objected by the learned Additional Public Prosecutor, on the grounds that the appellant/accused is not cooperating for medical treatment at Jail; further, she created nuisance in Jail and therefore, a case has been registered against the appellant.

8.The Hon'ble Supreme Court of India, in the case of Rajkumar Sharma Vs. State reported in 1978 SC Cr R 1437, observed two paramount considerations in the matter of granting or refusing bail, viz., likelihood of the accused fleeing from justice and his tampering with prosecution evidence, which relate to ensuring a fair trial of the case in Court of justice. It is essential that due and proper weight should be bestowed on these two factors apart from others even though the facts and circumstances of each case will govern the exercise of judicial discretion in granting bail and there cannot be an inexorable formula in the matter of granting of bail.

9.Bail on account of sickness can be a good ground when proper treatment is not available in jail. Here proper treatment is available in jail to the appellant, but she is not cooperating for treatment and she roughly behaved with the jail staff roughly. Therefore, a case has been registered against the appellant. In such circumstances, bail on account of sickness cannot be considered.

10.The appellant accused was charged for serious offences and she belongs to Peoples War Group. At the time of arrest, two PVC pipe bombs were recovered from her possession. The submission of the learned Additional Public Prosecutor that if the appellant/accused is released, she might use the opportunity to intensify her illegal activities, cannot be brushed aside. After appointment of defence counsel, the trial in the POTA case is about to start and the prosecution is ready for speedy trial to ensure early disposal of the case. The present appeal petition which contains no valid grounds is inadmissible and liable to be dismissed. It is pertinent to mention that when the accused was released on bail previously, she went absconding to actively indulge in Maoist activities and even after proclamation, she did not turn up for the trial proceedings, which clearly shows that she has scant regard for the orders of the Hon'ble Court and had never obeyed the orders. It is the tactic of the accused to mislead the judiciary on medical grounds to come out of the clutches of law. The appellant's earlier bail petition is rightly dismissed by the trial Court and it was confirmed by this Court. There is no change in circumstances. If bail is granted to the appellant/petitioner/accused at this juncture, she will definitely escape from clutches of law and there is every possibility that she may cause impediment to trial proceedings.

11.Pre trial detention has a purpose and policy behind it and the issue of bail or jail must be decided on relevant criteria and not on emotional appealing but legally pertinent circumstances. The paramount consideration of the Court is to see that the accused does not outlaw herself to make it

difficult for justice being visited upon her and the action of gravity of charge and the prima facie case against her. The possibility of absconding is more in this case and therefore, we decline to grant bail to the appellant and also, we find no merits in the Criminal Appeal.

Accordingly, the Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jer

To

1.The Special Court for POTA Offences and Sessions Judge,
Exclusive trial court of Bomb blast cases at Poonamallee,
Chennai.

2.The Deputy Superintendent of Police,
'Q' Branch CID,
Dharmapuri. Uthangarai Police Station.

3.The Public Prosecutor,
High Court, Madras.

Copy to:

1.The Superintendent of Police,
Dharmapuri District.

2.The Inspector of Polide
Dharmapuri District.

3.The Deputy Superintendent of Police,
Q Branch , CID , Coimbatore.

4.The Director General of police,
Mylapore Chennai-4.

+1cc to M/s. R.Sankarasubbu, Advocate, sr no.17629

Cr1.A.No.517 of 2020

AAB (CO)
RMP (30/03/2021)