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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Criminal Appeal No.485 of 2021

Union of India represented by
Inspector of Police,
National Investigation Agency,
Chennai.

RC No.08/2021/NIA/DLI

..Appellant/Complainant

Vs.

Mohammed Iqbal @ Senthil Kumar
S/o.Nagarajan

..Respondent/Accused

Criminal Appeal filed u/s.21 of the National Investigation Act against the judgment and order dated 03.09.2021 passed in CrI.M.P.No.222 of 2021 on the file of learned Special Judge for NIA cases, Poonamallee.

For Appellant : Mr.R.Karthikeyan
Special Public Prosecutor

For Respondent : Mr.SMA.Jinnah

JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J]

This criminal appeal is directed against the order dated 03.09.2021 passed in CrI.M.P.No.222 of 2021 by the learned Special Judge for NIA cases, Poonamallee.

2. For determination of this appeal, it may be relevant to give the dates and events chronologically:



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Dates	Events
01/12/2020	Based on the complaint of Sh.Ravichandran, Sub-Inspector of Police, C1, Thideer Nagar Police Station, a case was registered at C1, Thideer Nagar Police Station, Madurai City vide FIR No.971/2020 u/s.153A, 153B, 505(1)(b), 505(1)(c) and 505(2) of IPC and 13(1)(b) of UA(P) Act, 1967. The complainant, in his complaint, stated that the respondent Mohammed Iqbal @ Senthil Kumar (A1) had posted in Facebook account Thooga Vizhigal Rendu is in Kazimar Street, which denigrates Hindus, instigates Muslims to act against Hindus and creates communal disharmony amongst different religions in a manner prejudicial to the maintenance of public order.
02/12/2020	Sh.V.Ramalingam, ACP, SIC, Madurai City Police, the then Investigating Officer, arrested Mohammed Iqbal @ Senthil Kumar (A1), recorded his confession statement and seized the mobile phone used for committing the offence and during investigation, he had examined 16 witnesses.
25/01/2021	Bail application filed before learned Judicial Magistrate V, Madurai, in Cr.M.P.No.417 of 2021, which has been dismissed on the reasoning that the offences alleged are triable by sessions Court.
02/03/2021	The Assistant Commissioner of Police, Special Investigation Cell, Madurai, had filed Crl.M.P.No.984 of 2021 u/s.43(D)(2)(b) of the Unlawful Activities (Prevention) Act, 1967, seeking extension of remand period, which was allowed by the learned Judicial Magistrate V, Madurai, on the same day, extending the remand period from 90 days to 180 days.
03/03/2021	Respondent/accused filed a bail application u/s.167(2) Cr.P.C. before the learned Judicial Magistrate V, Madurai, in Crl.M.P.No.999 of 2021, which was dismissed on same day as statutory period for investigation was extended by order.
12/03/2021	Respondent filed bail application in Crl.M.P.No.1186 of 2021 before the Principal Sessions Judge, Madurai and the same was dismissed as period for investigation was extended.



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Dates	Events
April 2021	Respondent filed bail application before Madurai Bench in Crl.O.P.(MD) No.4951 of 2021 and adjourned.
20/04/2021	Government of India, Ministry of Home Affairs, CTCR Division, vide its order entrusted the investigation to NIA.
26/04/2021	NIA re-registered the case as FIR No.RC-08/2021/NIA/DLI under Section 153A, 153B, 505 (1)(b), 505(1)(c), 505(2) IPC and S.13(1)(b) of Unlawful Activities (Prevention) Act, 1967 and took up investigation.
02/07/2021	Madurai Bench of this Court dismissed the bail application in Crl.O.P.No.4951 of 2021 to renew his application before the Special Court for NIA cases as investigation is taken over by NIA.
	Application filed by the respondent for bail in Crl.M.P.No.222 of 2021 u/s.439 Cr.P.C. and counter filed by appellant.
03/09/2021	Orders passed by Special Judge releasing the respondent herein on bail.

3. Challenging the order of bail that was granted by the Special Court under the National Investigation Agency Act in Crl.M.P.No.222 of 2021 dated 03.09.2021, the National Investigation Agency has filed the present appeal.

4. Heard Mr.R.Karthikeyan, learned Special Public Prosecutor appearing for the appellant and Mr.SMA.Jinnah, learned counsel appearing for the respondent/accused.

5. The entire case falls in a very narrow compass. It is seen that while the respondent/accused was being remanded to judicial custody from time to time by the learned Judicial Magistrate V, Madurai, the Assistant Commissioner of Police, Special Investigation Cell, Madurai, appears to have filed an application u/s.43D(2)(b) of the Unlawful Activities (Prevention) Act, 1967, for extending the period of remand from 90 days to 180 days. On this application, on 02.03.2021, the learned Magistrate has extended the period of remand from 90 days to 180 days. The learned Magistrate has also dismissed the default bail application of the respondent/accused in Crl.M.P.No.999 of 2021 on 03.03.2021 on the ground that he had extended the remand period from 90 days to 180 days.

6. This, in our considered opinion, is legally vitiated



inasmuch as the application for extension of remand period u/s.43D(2)(b) of the Unlawful Activities (Prevention) Act, 1967, should have been filed by the Public Prosecutor and not by the Investigating Officer. That apart, the said application should have been filed before the Special Court or Sessions Court, as the case may be and not before the learned Judicial Magistrate V, Madurai, since the offences alleged against the respondent/accused are under the 43D(2)(b) of the Unlawful Activities (Prevention) Act, 1967. This issue is no more res integra and stands settled by the Hon'ble Supreme Court in Bikramjit Singh v. State of Punjab¹. The law laid down in Birkamjit Singh's case is reiterated by the Hon'ble Supreme Court in Sadique & others v. State of Madhya Pradesh²

7. Based on the extension of remand, the State as well National Investigation Agency has conducted investigation and have collected several materials against the respondent/accused. Of course, the materials so collected will not stand vitiated just because they were collected during the period when the remand was erroneously extended by the learned Judicial Magistrate V, Madurai.

8. In India, illegally collected evidence will not by itself stand vitiated as held by the Constitution Bench of the Hon'ble Supreme Court in Pooran Mal v. Director of Inspection (Investigation), New Delhi and others³.

9. We do not find any infirmity in the impugned order of bail that has been granted by the learned Special Judge for NIA cases, Poonamallee, vide order dated 03.09.2021 in CrI.M.P.No.222 of 2021, warranting interference in appeal.

In the result, this Criminal Appeal is devoid of merits and accordingly, the same is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm

1 2020 (10) SCC 616
2 LL2021 SC 434
3 1974 (1) SCC 345



To

1. The Special judge for NIA cases,
Poonamallee.

2. The Special Public Prosecutor,
High Court, Madras.

Copy To

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

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.62281

Criminal Appeal No.485 of 2021

PVS (CO)
RGA(10/12/2021) (28/12/2021)