



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice A.A.NAKKIRAN

Crl.A.No.101 of 2022

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

RC.No.09/2021/NIA/DLI

..

Appellant/Complainant

Vs.

Abdullah @ Saravana Kumar

..

Respondent/Accused-1

Criminal Appeal filed under Section 21 of the National Investigation Agency Act, 2008, to set aside the order dated 28.12.2021 passed in Crl.M.P.No.389 of 2021 on the file of the Special Court under the National Investigation Agency Act, 2008, (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee and cancel the bail granted to the respondent herein.

For Appellant : Mr.R.Karthikeyan
Special Public Prosecutor
(NIA)

For Respondent : Mr.A.Raja Mohamed

JUDGMENT

(Delivered by P.N.PRAKASH, J.)

This criminal appeal has been filed to set aside the order dated 28.12.2021 passed in Crl.M.P.No.389 of 2021 on the file of the Special Court under the National Investigation Agency Act, 2008, (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee and cancel the bail granted to the respondent herein.



WEB COPY

2. It is the case of the prosecution that Abdullah @ Saravana Kumar (respondent/accused herein) had made certain comments in his Facebook account on various dates advocating the establishment of Islamic Caliphate, bringing into force the 'Shariah law' and forcible closure of liquor shops, as liquor is 'haram' under the "Holy Quran".

3. Based on those comments in the Facebook account of Abdullah, the Sub-Inspector of Police, B-3, Theppakulam Police Station, registered a case on 10.04.2021 in Crime No.137 of 2021 for the offences under Sections 121, 124-A, 153-A, 153-B and 505(1)(c) IPC and Sections 15 and 18 of the Unlawful Activities (Prevention) Act, 1967 (for brevity "the UAP Act").

4. The respondent was arrested by the Theppakulam police on 11.04.2021 and the police seized his mobile phone, pen drive and laptop for the purpose of investigation.

5. The case in Crime No.137 of 2021 was transferred to the file of the National Investigation Agency (for brevity "the NIA") on 21.05.2021 on the orders of the Central Government and the case was re-registered as RC.No.09/2021/NIA/DLI.

6. When the NIA wanted to take police custody of the respondent, the respondent stated that he is taking tablets for illness and therefore, the Special Court for the NIA Act Cases, Poonamallee (for brevity "the Special Court") referred him to the Institute of Mental Health (for brevity "the IMH"), Kilpauk, for medical examination. The report dated 07.07.2021 from the IMH, Kilpauk, reads as under:

"Impression:

The current psychometric evaluation of the patient shows that he has an ambivert personality and no significant pathological disturbances of the psychotic nature elicited in the patient at present.

Detailed psychological assessment done and reported as he has ambivert personality and no significant psychological disturbance of psychotic nature elicited at present.

Serial observations were made during admission period and nil psychopathology elicited at present. He is fit to stand trial at present and fit to be placed under police custody. During the police custody and Judicial custody, he is advised to take psychiatric medications as prescribed."



7. The police custody for five days was given from 09.07.2021 to 14.07.2021. After completing the investigation, the NIA has filed a charge sheet (final report) in the Special Court on 06.10.2021 and the same has been taken on file as C.C.No.7 of 2021 and charges are yet to be framed.

8. The respondent filed an application for bail in CrI.M.P.No.389 of 2021 before the Special Court, in which, the NIA filed a counter affidavit opposing the release of the respondent on bail.

9. The Special Court, by the impugned order dated 28.12.2021 in CrI.M.P.No.389 of 2021, has granted bail to the respondent, aggrieved by which, the NIA has filed the present petition under Section 21 of the NIA Act.

10. Heard Mr.R.Karthikeyan, learned Special Public Prosecutor (NIA) appearing for the petitioner and Mr.Raja Mohamed, learned counsel appearing for the respondent, who filed his counter.

11. Before advertizing to the rival submissions, it may be pertinent to state here the legal position with regard to the grant of bail to an accused, who is facing a prosecution under the UAP Act. The proviso to Section 43-D (5) reads as follows:

"43-D. Modified application of certain provisions of the Code.-

.....

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true."

12. A reading of the above shows that bail can be granted to an accused, who is facing a prosecution under the UAP Act, only, if the Court comes to the opinion that there are no reasonable grounds for believing that the accusation against such person is prima facie true.



13. Bearing this statutory requirement in mind, we carefully perused the impugned order dated 28.12.2021 passed by the Special Court. In paragraph no.8 of the impugned order, the Special Court has rejected the plea of the respondent that he should be granted bail under Section 330 Cr.P.C. in the light of the report dated 07.07.2021 given by the IMH, Kilpauk, referred to above.

14. After holding so, the trial Court has considered the provisions of the Mental Healthcare Act, 2017 and has given the following findings in paragraph nos.12 and 13:

"12. Therefore, it is clear that the Government of India has enacted the above said Act in order to protect the rights and interest of the mentally ill persons and to provide treatment, care and rehabilitation to improve the capacity of the mentally ill person to develop his or her full potential and to facilitate his or her integration into community life and to fulfill the obligations under the Constitution and the obligations under various International Conventions ratified by India.

13. Hence, in the considered view of this Court that the long incarceration of this accused would suffer his mental health. Apart from that, the investigation has already been completed as early as on 06.10.2021 and the said case was taken on file in C.C.No.7/2021 and therefore, the further detention of this accused inside the prison is not required."

15. In paragraph no.14 of the impugned order, the trial Court has held that there is no specific allegation that the respondent had preached the people to take arms and revolt against the Government established by the law in India.

16. Finally, in paragraph no.16 of the impugned order, the trial Court has observed as follows:

"16. There is no allegation of bad antecedents, involvement in any violent activities or collection of arms, ammunitions, funds, etc. Alleged posting of Muslim religious messages in his Facebook account and alleged enquiry made by the accused to join the ISIS organization are not sufficient grounds to prolong his detention even after 261 days."



17. Strangely, the trial Court has not given a positive finding that the allegations against the respondent are not prima facie true, as required under the proviso to Section 43-D (5) of the UAP Act.

WEB COPY

18. In our opinion, the impugned order is not legally sustainable. However, on a conspectus of the facts obtaining in this case viz., the allegation against the respondent is that he had uploaded offensive posts in his Facebook account and nothing beyond that. That apart, even the report of the IMH shows that he is an ambivert personality, though he does not have significant pathological disturbance. The report also states that he has immature approach towards life and lacks integrated view towards the world and he appears to live in a world of fantasy. Post his release from custody, the respondent has been cooperating with the NIA by giving his voice sample, etc. Under such circumstances, we do not want to be harsh on the respondent by cancelling his bail and sending him back in judicial custody.

19. The learned counsel for the respondent submitted that the respondent will cooperate with the Special Court for framing of charges and conducting trial without adopting any dilatory tactics by cross-examining the witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab¹.

20. The undertaking given by the learned counsel for the respondent is recorded and accepted. However, it is made clear that, if the respondent adopts any dilatory tactics during trial, it is open to the trial Court to remand him in judicial custody, in the light of the law laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh²

With the above observations and directions, this criminal appeal stands dismissed.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

nsd

¹ (2015) 3 SCC 220

² JT 2001 (4) SC 319



To

1.The Sessions Judge,
Special Court under the National
Investigation Agency Act, 2008,
(Sessions Court for Exclusive Trial
of Bomb Blast Cases),
Poonamallee.

2.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

+1cc to Mr.Karthikeyan, Advocate SR.No.17553
+2cc to Mr.Raja Mohamed, Advocate SR.No.17826

Crl.A.No.101 of 2022

MG(CO)
CB(01/04/2022)