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Crl.A.Nos.715 & 716 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.09.2022

PRONOUNCED ON : 01.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**

AND

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

Crl.A.Nos.715 & 716 of 2022

- | | |
|------------------|--|
| 1. G.Dharmendran | .. Appellant in Crl.A.No.715/22
/Accused No.6 |
| 2. E.Mohan | .. Appellant in Crl.A.No.716/22
/Accused No.7 |

Vs.

Union of India rep by:
The Inspector of Police
National Investigation Agency,
Chennai-4.
(Crime R.C.No.2/2022/NIA/DLI) .. Respondent in both Crl.As.

Prayer in Crl.A.No.715 of 2022: Criminal Appeal filed under Section 21(4) of NIA Act, to set aside the order in Crl.M.P.No.231 of 2022 dated 18.05.2022 in Spl.S.C.No.1 of 2022 in Crime RC No.02/2022/NIA/DLI on the file of the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee at Chennai and to grant bail to the appellant/A6.



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For Appellant : Mr.V.Maharajan
(in both cases)

For Respondent(s) : Mr.R.Karthikeyan,
(in both cases) Special Public Prosecutor (NIA)

COMMON JUDGMENT

RMT.TEEKAA RAMAN, J.

Crl.A.No.715 of 2022 is filed by G.Dharmendran (A6), against the order passed by the Special Court for NIA Cases, rejecting his bail petition in Crl.M.P.No.231 of 2022, while Crl.A.No.716 of 2022 is filed by E.Mohan (A7) against the order of rejecting his bail petition in Crl.M.P.No.232 of 2022 dated 18.05.2022. Since the contentions raised in both the cases are common, they are taken up together, common arguments were heard and disposed of by this common judgment.



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2. The facts distilled from the final report in Spl.S.C.No.01 of 2022

on the file of the Special Judge, Special Court for Trial of NIA Cases at Poonamallee, Chennai are as under:-

(a) The deceased Hamida A Lalljee (for short **“Hamida”**) was having a Savings Bank Account in Indian Overseas Bank, Mumbai Fort Branch, in which, around Rs.40,00,00,000/- [Rupees Forty Crores only] was available. It appears that the said SB Account was not frequently operated. This came to the notice of the The Liberation Tigers of Tamil Eelam (for short **“LTTE”**), a proscribed Terrorist Organization under the Unlawful Assembly (Prevention) Act, 1967 (for short **“UAP Act”**) and that they decided to stealthily siphon off the said money for their organization. One Umakanthan @ Idhayan @ Charles @ Iniyan, a key LTTE operative stationed in Europe was closely monitoring the said savings bank account. On his directions, a Srilankan Tamil lady Letchumanan Mary Franciska (A1) [for short **“Mary”**] came to India and managed to obtain documents like Aadhaar, Pan and Indian Passport in her name. One Kenniston Fernando (A2), K.Baskaran (A3), C. Johnson Samuel (A4), G. Dharmendran (A5) and E.Mohan (A6) also joined the bandwagon at various stages of operations in order to knock-



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off the money. They started to create fake Power of Attorney as if the deceased Hamida had given it in favour of A1, armed with which, they attempted to withdraw the amount from the said account of the deceased Hamida. However, before they could execute their dubious plan, misfortune fell on them when A1-Mary was intercepted at Chennai Airport on 01.10.2021 with an Indian Passport and, thereafter, she was handed over to the 'Q' Branch CID of the State Police which conducted preliminary enquiries and registered a case in Crime No.01 of 2021 for the offence under Section 12(1)(b), 12(1-A)(a) of the Passport Act, 1967 r/w 420, 465, 468, 471 IPC r/w 14(a) of Foreigners (Amendment) Act, 2004 and arrested Mary (A1) and produced before the Judicial Magistrate-I, Alandur, Chennai, who remanded her in judicial custody. Subsequently, 'Q' Branch CID altered the case in Crime No.01 of 2021 and added Section 18, 39 and 40 of the UAP Act, 1967 and filed an alteration report. Since the provisions of UAP Act were added to the FIR, the case records were transferred from the Court of the Judicial Magistrate to the Court of Principal District and Session, Chengalpattu, which is the designated court for trial under the UAP Act cases. Pursuant to the transfer of the case, the accused were produced before the Court of Session, Chengalpattu, for remand from time to time.



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(b). The ninety days remand envisaged by S.167 of Cr.P.C. was to expire on 31.12.2021. Anticipating that it would not be possible to complete the investigation before the date, the Special Public Prosecutor filed a report under the first proviso to Section 43D (2) of UAP Act for the extension of the remand period. The Sessions Judge examined the report and, by order dated 03.01.2022, accepted the report of the Special Public Prosecutor and extended the remand to a further period of 90 days from 31.12.2021.

(c). Thereafter, considering the gravity of case, the Government of India, by order dated 17.01.2022, entrusted the investigation of the case to the National Investigation Agency (for short “the NIA”) which registered the case as RC-02/2022/NIA/DLI on 18.01.2022 u/s 120-B, 465, 467, 468, 471, 472 & 474 of IPC, Sections 10, 13, 38 & 39 of the UAP Act, 1967 , Sections 12(1)(b) & 12(1A) (a) of the Passport Act, 1967 and Section 14(a) of Foreigners (Amendment) Act, 2004 and the FIR was submitted before the Special Court for NIA cases on 19.01.2022. The NIA effected the arrest of the other accused, other than those who were already arrested by Q Branch CID, Chennai, in this case.



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Since the Special Court for Exclusive Trial of Bomb Blast Cases at Poonamallee, Chennai, has been designated as the Special Court for NIA cases, records from the Principal District and Sessions Court, Chengalpattu, were transferred to the Special Court for Exclusive Trial of Bomb Blast Cases at Poonamallee, Chennai, on 16.02.2022. The NIA completed the investigation and filed a final report on 29.03.2022 for the offences u/s 120-B, 465, 467, 468, 471, 472 & 474 of IPC, Sections 10, 13, 38 & 39 of the UAP Act, 1967, Sections 12(1)(b) & 12(1A) (a) of the Passport Act, 1967 and Section 14 (a) of Foreigners (Amendment) Act, 2004 against 6 accused, which has been taken on file in Spl. S.C.No.01 of 2022.

3. Heard the learned counsel for the appellants and the learned Special Public Prosecutor for NIA cases.

4. The 'Q' Branch police have registered the FIR under IPC offences and also added Sections 18, 39 and 40 of the UAP Act. Thereafter, NIA taken up the case on 17.01.2022.



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5. The appellant [G.Dharmendran] in Crl.A.No.715 of 2022, who is arrayed as A6 was in the police custody for 4 + 4 days and after completing the enquiry, charge sheet was filed on 29.03.2022. He was arrested on 27.10.2021 and in the final report, the NIA has dropped the accused A3 and A5. The appellant/A6 has moved Crl.M.P.No.231 of 2022 before the learned Special Judge for trial of NIA Cases, Chennai and the same was dismissed on 18.05.2022 and hence, the appeal.

6. The appellant [E.Mohan] in Crl.A.No.716 of 2022, who is arrayed as A7 was originally arrested by 'Q' Branch police on 30.10.2021 and after transfer of investigation to the NIA, they completed the investigation, filed the charge sheet on 29.03.2022. Hence, he filed Crl.M.P.No.232 of 2022 for bail and the same was dismissed on 18.05.2022 and hence, the appeal.

7. As per the final report as against these two appellants, the present charges are only under Sections 120-B, 419, 465, 468 and 471 r/w 109 IPC and the other alleged offences under UAP Act, Passport Act and Foreigners (Amendment Act), were deleted by NIA after investigation.



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8. Record reveals that A4-Johnson Samuvel has been granted bail by this Court in Crl.A.No.642 of 2022 on 02.08.2022.

9. The alleged overtact against these two appellants viz., A6 and A7 are that as per the confession statement of A4-Johnson Samuvel, he had fabricated the Indian ID proofs Aadhar Card No.2366 5271 7476 in the name of Hamida and PAN Card AACPL8463C in the name of Hamida and admitted that the photographs affixed in the said Aadhar card and PAN cards belongs to impersonators. Further, A4 also confessed that two PAN cards vide No.AADPL0396H with different date of births were prepared in the name of Iskandar A Lalljee with the help of Dharmendran/A6 by affixing photograph of Mohan/A7 (Impersonator). The date of birth in the two fabricated PAN Cards are mentioned as 27.06.1962 and 24.07.1988 which did not pertain to the original Iskandar Lalljee, who's date of birth was on 27.07.1962.

10. The accused A1 and A5 have conspired together and impersonated Iskandar A.Lalljee with A7-Mohan with the active assistance of A6-Dharmendran to siphon off the huge money lying in the



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joint account of the Hamida, Iskanthar A Lalljee and Arshia A Lalljee maintained in the IOB Fort Mumbai Branch and utilize it for the revival of LTTE in India.

11. The record further reveals that on the instructions of A4-Johnson Samuvel, A6-Dharmendran [appellant in Crl.A.No.715 of 2022] has arranged A7-Mohan [appellant in Crl.A.No.716 of 2022] and gave training to Mohan how to speak and spell the name Iskanthar A Lalljee and recorded his video clipping and promised him, that he will be paid Rs.100000/- for acting/impersonating as Iskandar A Lalljee. Agreed to terms and conditions imposed by A4-Johnson Samuel, A7-Mohan, has completed the work by impersonating Iskandar A Lalljee and received an initial amount of Rs.3000/- as advance in cash from A4-Johnson Samuel in presence of A6- Dharmendran.

12. The reason assigned by the Special Court for rejecting the bail is that though the appellants are not charged under the provisions of the UAP Act, directly they have been charged for criminal conspiracy under Section 120-B of IPC, which attracts the offence punishable under the provisions of UAP Act also.



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13. We are unable to endorse such a view expressed by the Special Court, especially, in the light of the fact that though these appellants are initially charged under the provisions of UAP Act, later on, after completing the investigation, charges under the above said Act were dropped against the appellants/A6 & A7, by the prosecution itself. Further, as of now, the appellants are in custody from 27.10.2021 and 30.10.2021 respectively.

14. Therefore, considering the period of incarceration and also the fact that A4-Johnson Samuvel has been granted bail by this Court in Crl.A.No.642 of 2022 on 02.08.2022 and charge sheet has already been filed, we are inclined to grant bail to the appellants herein/A6 & A7 on certain conditions.

15. Accordingly, **both the Criminal Appeals are allowed** and the orders dated 18.05.2022 passed by the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee, Chennai in Crl.M.P.Nos.231 and 232 of 2022 are set aside and the appellants/A6 & A7 are ordered to be released on bail in Spl.S.C.No.1 of 2022 pending trial,



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a) on each of them executing a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a likesum to the satisfaction of the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee, Chennai.

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge, Special Court may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the appellants shall report before the Special Court on every Monday at 10.30 a.m. and also on all the hearing dates.

(d) the appellants shall not leave the State of Tamil Nadu without intimating the respondent police.

(e) the appellants shall not commit any offences of similar nature;

(f) the appellants shall not abscond during trial;

(g) the appellants shall not tamper with evidence or witness during trial;

(h) on breach of any of the aforesaid conditions, the learned Judge, Special Court is entitled to take appropriate action against the appellants in accordance with law as if the conditions have been imposed and the appellants released on bail by the learned Judge, Special Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];



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- (i) if the appellants thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

16. Before parting with, we make it clear that the observations and findings recorded in this judgment are only for the limited purpose of considering the applications for bail and the Special Court shall not be influenced by the same during the trial or while rendering its decision.

(P.N.P.,J.) (TKR,J.)
01.11.2022

Note to office:
Issue order copy today.

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To

1. The Inspector of Police
National Investigation Agency, Chennai-4.
2. The Special Court for NIA Cases, at Poonamallee,
Chennai.
3. The Superintendent,
Central Prison at Puzhal.
4. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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Pre-delivery Common Judgment in
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