



Crl.A.No.999 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Jugement Reserved on : 10..10..2022

Judgement Pronounced on : 20..10..2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

Criminal Appeal No.999 of 2022

Asif Musthaheen

..... Appellant

-Versus-

The Deputy Superintendent of Police,
Crime Branch – Erode North District,
Erode.
[Crime No.355 of 2022]

.... Respondent

Appeal filed under Section 21(iv) of The National Investigation Agency Act, 2008, praying to set aside the impugned order dated 24.08.2022 passed by the learned Principal Sessions Judge, Erode, in C.M.P.No.2361 of 2022 and enlarge the appellant on bail with any stringent conditions which may be imposed by this Court.

For Appellant : *Mr.S.Veeraraghavan*

For Respondent : *Mr.R.Muniyapparaj,*
Addl. Public Prosecutor



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JUDGEMENT

WEB COPY This Criminal Appeal has been filed against the order dated 24.08.2022 passed by the learned Principal Sessions Judge, Erode, Erode District, dismissing the bail petition in Crl.M.P.No.2361 of 2022 filed by the Appellant/Accused.

2. The case of the prosecution has been succinctly captured in para nos.3, 4, 6, 7 and 8 of the counter that has been filed by the investigating officer and they read as under:-

“3 It is submitted that the respondent registered a case in Crime No.355 of 2022 dated 26.07.2022 against the appellant for the offences under Sections 121, 122 and 125 IPC and Sections 18, 18A, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 on the basis of a complaint given by Tr.T.Kumaresh, Sub-Inspector of Police, Erode (North) Police Station, who received a secret information with regard to the involvement of the appellant accused in the above crime.

4 It is submitted that the secret investigation conducted and the activities of the appellant have revealed a fact that the appellant accused has links with the banned organization namely Islamic State of Iraq and Syria (ISIS) having Had Office at Iraq and Syria. The appellant had downloaded an App called TELEGRAM and NEKOGRAM in his mobile phone number to contract the leaders of ISIS to execute their commands and to do terrorist activities in India. Immediately, the respondent swung into action and arrested the appellant on 26.07.2022 at 22:30 hours in his house and in the



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presence of the Revenue Inspector and Village Administrative Officer. The grounds of arrest has been communicated to the appellant as per the guidelines issued by the Hon'ble Supreme Court.

6 It is submitted that pursuant to the voluntary confession given by the accused, the respondent has recovered ISIS flag, his Samsung Galaxy Cell Phone (A21S model), one Transcend pen-drive (16GB), two knives and three diaries under a seizure mahazar. Further, the appellant had opened the lock to download certain chats from his Nekogram conversation App with Abu Basheer Samiya. All those conversations in Arabic language were photographed with the help of a police photographer and 76 photos have been printed. The recovered objects were sent to the Ld. Principal Sessions Judge, Erode, on Form 91. Further, the appellant did not cooperate to unlock his cell phone to know the entire conversation uploaded/exchanged by the accused with his high command.

7 It is submitted that the accused has also established a link with like minded people at Erode and continued to induce them to establish their links with ISIS as a mark of respect to Islam. The appellant was arrested and remanded to the judicial custody on 27.06.2022. Thereafter, the respondent filed CMP No.2320 of 2022 before the Learned Principal Sessions Judge, Erode, to get police custody. The Learned Judge has allowed the petition on 08.08.2022 and granted custody for two days. During the police custody, again the appellant gave a voluntary statement on his own volition wherefrom the respondent has recovered two photographs from the house of the appellant. One photograph of the appellant with ISIS flag and another photograph shows an ISIS terrorist holding a beheaded head of a person, which the appellant has kept as his profile photo in NEKOGRAM App of his cell phone. Both were seized under a mahazar and sent to the court. The appellant has also stated that he has generated virtual numbers to create a fake social media account and it was sent to ISIS to enable to create a fake account for their



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communications.

8. It is submitted that in view of a peculiar lock system in the cellphone recovered from the petitioner, the entire conversation and chats could not be downloaded. The appellant had applied an advanced lock system which would destroy the entire recordings/conversation if someone has made an attempt to unlock the system. Therefore, it requires the assistance of a hi-tech lab. Under such circumstances, the seized cell-phone has to be examined by a team of experts in a lab at Trivandrum which is functioning under the control of the Central Government. For that purpose, the respondent has submitted a requisition to the Learned Principal District Judge, Erode, to grant permission for the examination of the cell-phone and the pen drive and the same were sent to Cyber lab on 21.09.2022 and report is yet to be obtained.”

3. In this backdrop, the accused filed an application for bail in Crl.M.P.No.2361 of 2022 in the Court of the Principal Sessions Judge, Erode, which was dismissed on 24.08.2022, aggrieved by which, the present appeal has been filed.

4. Heard Mr.S.Veeraraghavan, learned counsel for the appellant/accused and Mr.R.Muniyapparaj, learned Additional Public Prosecutor for the respondent/State.

5. Mr.S.Veeraraghavan, learned counsel for the appellant/accused



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contended that in Column No.8 of the Arrest Intimation, there is no reference to the articles that were seized from the accused and, therefore, the contention of the police that they seized the mobile phone, pen drive, two knives and 3 diaries, has to be outrightly rejected.

6. We are unable to appreciate this submission because, the arrest preceded the recovery. In other words, only after the accused was arrested, his confession statement was recorded and thereafter, seizures were effected. Therefore, the non-mentioning of the articles that were seized later in Col.No.8 of the Arrest Intimation cannot vitiate the arrest.

7. The learned counsel for the appellant/accused further contended that the police have relied upon the Google Translation of the Arabic messages into English, that were allegedly found in the mobile phone and Google themselves have given a disclaimer stating that the translation software is not reliable one. That apart, Google Translation was placed before the trial court only when the counsel for the defence raised the issue in the course of the arguments in the bail application before the trial court.



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8. According to the police, they found a lot of conversations in Arabic language while inspecting the mobile phone that was seized and as such the mobile has also been sent to the Hi-Tech Lab in Trivandrum for unlocking and to ferret out the data in it. The usage of Google Translation at the threshold for the police to satisfy themselves about the activities of the accused cannot be faulted.

9. The learned counsel for the appellant/accused further contended that the police have not implicated one Yasim in the case and have selectively foisted this case against the appellant/accused which is illegal. In support of this contention, he placed strong reliance on the judgement of the Supreme Court in **Izharul Haq Abdul Hamid Shaikh v. State of Gujarat [MANU/SC/0374/2009]**.

10. In this case, the investigation is still in progress. Whereas, in the case relied upon by the learned counsel for the appellant/accused, charge sheet was filed against several accused and when bail was granted to some



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of the accused, the Supreme Court has stated that those who are similarly placed should also be granted bail. Therefore, that judgement would be of no avail to the appellant/accused.

11. The learned counsel lastly contended that at every stage of the case, the prosecution is coming up with improved versions. In that initially, they had stated that he was planning to kill the top Hindu leaders and subsequently, they have stated that he was planning to eliminate the prominent leaders of BJP and RSS, etc.,

12. We are unable to appreciate the aforesaid submission because, in para 5 of the counter, the confession given by the appellant/accused has been extracted. Such a confession is not admissible in evidence except the portion that has led to any discovery of a new fact. Only in the final report, the entire picture will get crystallized.

13. Sub-section (5) of 43-D of the UAP Act, 1967, reads as under:-



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“43D. Modified application of certain provisions of the Code.--(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

... ..
... ..

(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.”

14. On a perusal of the case diary, we are unable to persuade ourselves to hold that there are no *prima facie* materials against the appellant/accused for granting bail. The investigation is at an initial stage. The report from the experts have to be obtained and the police have to find



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out the involvement of others, if any, along with the appellant/accused.

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15. In the light of the above legal position and in the facts and circumstances of the case, we find no merits in the appeal and the same is liable only to be dismissed.

In the result, this Criminal Appeal is dismissed and the order dated 24.08.2022 passed by the Sessions Court (Special Court for UAP Act cases), Erode District is confirmed.

[P.N.P., J.] [T.K.R., J.]
20..10..2022

Index: yes/no
Speaking/Non Speaking Order
kmk
To

- 1.The Principal Sessions Judge, Erode, Erode District.
- 2.The Deputy Superintendent of Police, Crime Branch – Erode North District,Erode.
- 3.The Public Prosecutor, High Court, Madras.

P.N.PRAKASH.J.,
AND
RMT. TEEKAA RAMAN.J.,



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Pre Delivery Judgement
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