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Crl.A.No.44 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.44 of 2023

Asif Musthaheen

.. Appellant

Vs

**The Deputy Superintendent of Police,
Crime Branch – Erode North District,
Erode.**

Crime No.355/2022

.. Respondent

Prayer: Criminal appeal filed under Section 21(4) of NIA Act, 2008 praying to set aside the impugned order dated 05.01.2023 passed by the Hon'ble Principal District and Sessions Judge of Erode District in C.M.P.No.4081 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 Ms.C.Sivasankari

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by
Mr.M.Sylvester John, Advocate



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JUDGMENT

[Judgment of the Court was made by **M.SUNDAR, J.**]

Captioned 'Criminal Appeal' [hereinafter 'Crl.A.' for the sake of brevity] has been filed in this Court under Section 21(4) of 'the National Investigation Agency Act, 2008 (Act 34 of 2008)' which shall hereinafter be referred to as 'NIA Act' for the sake of convenience and clarity. To be noted the caption in the memorandum of appeal refers to Section 21(iv) of NIA Act but in the hearing it emerges clearly that captioned appeal is under Section 21(4) of NIA Act.

2. Captioned appeal is directed against an order dated 05.01.2023 made in Crl.M.P.No.4081 of 2022 vide Crime No.355 of 2022 on the file of Deputy Superintendent of Police (jurisdictional police), North Police Station, Erode. To be noted, this 05.01.2023 order in Crl.M.P.No.4081 of 2022 has been made by the learned Principal District



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and Sessions Judge's Court, Erode dismissing a bail plea and this District Court shall hereinafter be referred to as 'trial Court' for the sake of convenience and clarity, likewise the order dated 05.01.2023 made by the trial Court shall be referred to as 'impugned order' also for the sake of convenience and clarity.

3. When the appeal was taken up, Mr.S.Veeraraghavan, learned counsel representing Ms.C.Sivasankari, learned counsel on record for the appellant and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor assisted by Mr.Sylvester John, learned counsel for respondent are before us.

4. The appeal turns on a very short point. Before plunge into the core issue for better appreciation of this order, we deem it appropriate to set out most relevant undisputed facts, undisputed dates / events and they are as follows:



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(i) The bail petition in the trial Court, i.e., Crl.M.P.No.4081 of 2022 is dated 20.12.2022, it was filed under Section 439 of 'The Code of Criminal Procedure, 1973' [hereinafter 'Cr.P.C.' for brevity] but it is made clear that what was urged / exhorted before the trial Court was only a default bail plea under Section 167(2) of Cr.P.C. This means that various averments qua bail plea pales into insignificance as far as this appeal is concerned.

(ii) A tabulation is as follows:

<i>Date</i>	<i>Event</i>
26.07.2022	... F.I.R. on the file of jurisdictional police being F.I.R. No.355 of 2022 for alleged offences under Sections 121, 122, 125 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and Sections 18, 18A, 20, 38 and 39 of 'The Unlawful Activities (Prevention) Act, 1967' which shall hereinafter be referred to as 'UAPA Act' for the sake of convenience and clarity.



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27.07.2022	...	Appellant was remanded to custody
03.08.2022	...	First bail petition being Crl.M.P.No.2361 of 2022 was filed in the trial Court.
24.08.2022	...	First bail petition was dismissed by the trial Court on merits.
17.10.2022	...	Prosecution filed Crl.M.P.No.3164 of 2022 on the 84 th day of remand by resorting to Section 43D (2) (b) (first proviso) of UAPA.
19.10.2022	...	Aforementioned Crl.M.P.No.3164 of 2022 was allowed by trial Court by an order whereby the time for filing the final report / charge sheet stood extended till 22.01.2023 (180 days) [to be noted, further period of 90 days was granted to complete the investigation in Crime No.355 of 2022]
20.10.2022	...	Crl.A.No.999 of 2022 filed by appellant against dismissal of first bail petition was dismissed by a Hon'ble Division Bench of this Court.
24.10.2022	...	90 th day from the date of remand elapsed (to be noted this 90 th day is arrived at by applying law laid down by Hon'ble larger bench of Hon'ble Supreme Court in a reference i.e., Crl.A.Nos.701-702 of 2020 vide order dated 27.03.2023 in Kapil Wadhawan's case.
02.12.2022	...	Aforementioned dismissal of Crl.A.No.999 of 2022 by Hon'ble Division Bench was carried to Supreme Court vide Special Leave to Appeal (Crl.) No.10980 of 2022 and this SLP was dismissed by Hon'ble Supreme Court.



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20.12.2022	...	Date of second bail petition out of which captioned appeal arises (petition is dated 20.12.2022, we are informed that it was filed in trial Court on 22.12.2022)
05.01.2023	...	As already alluded to supra second bail petition was argued only as default bail petition and trial Court dismissed the same.
06.01.2023	...	Appeal against aforementioned dismissal of second default bail petition preferred in this Court (captioned appeal)
19.01.2023	...	Final report / charge sheet filed by prosecution on the 177 th day qua date of remand.
22.01.2023	...	180 days qua remand elapsed
06.02.2023	...	A writ petition in W.P.No.28801 of 2022 filed by the appellant's father regarding an alleged prison offence was ordered by this Court.

5. As regards aforementioned W.P.No.28801 of 2022 order dated 06.02.2023 was not filed as part of the case file but it was ferreted out in the hearing and we had the benefit of reading the same. Both sides submit that it pertains to an alleged prison offence and curtailment of visitation rights by jail authorities which was assailed successfully by the petitioner. Therefore, it is not of relevance to the case on hand and it is not



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necessary to go into the same. Learned counsel for appellant wanted to place some case laws on the merits of the bail plea but we deem it appropriate to say that the exercise should be reserved for further proceedings owing to the admitted position that the bail plea in trial Court was argued only on the default bail point which therefore becomes the short point and acute angle on which captioned appeal now turns.

6. The aforementioned undisputed facts and undisputed dates and events make the legal drill on hand fairly simple.

7. Before we set out our discussion and dispositive reasoning, it is necessary to say that 02.12.2022 order of Hon'ble Supreme Court dismissing SLP (Crl.)No.10980 of 2022 was not placed before us therefore this Bench went into official website of Hon'ble Supreme Court, ferreted out, located the order and a scanned reproduction of the same is as follows:



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ITEM NO.17 COURT NO.5 SECTION II-C
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 10980/2022
(Arising out of impugned final judgment and order dated 20-10-2022
in CRLA No. 999/2022 passed by the High Court Of Judicature at
Madras)

ASIF MUSTHAHEEN Petitioner(s)
VERSUS
THE DEPUTY SUPERINTENDENT OF POLICE Respondent(s)

(IA No.176335/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.176333/2022-EXEMPTION FROM FILING O.T.)

Date : 02-12-2022 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. Vikas Singh Jangra, AOR
Mr. Bhakti Vardhan Singh, Adv.
Mr. Amit Kumar Pathak, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R
Looking to the allegations against the petitioner and the
incriminating material recovered during the course of
investigation, no case is made out to release the petitioner on
bail. The Special Leave Petition stands dismissed.
Pending application(s) shall stand disposed of.

By (NISHA TRIPATHI)
ATT. REGISTRAR-cum-PS ASSISTANT REGISTRAR



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8. We now proceed with the discussion and dispositive reasoning.

9. The plea before the trial Court was one for default bail as alluded to delineated supra. This means that the test before the trial Court was whether prosecution has filed final report, i.e., charge sheet within the statutorily stipulated time. In the case on hand, as would be evident from the undisputed dates and events supra, the 90th day from the date of remand if computed by applying Kapil Wadhawan's case declaration of law elapsed on 24.10.2022 but prior to 90th day, prosecution has filed a petition for extension of this 90 days time frame by resorting to Section 43D of UAPA and the same was allowed by trial Court. Therefore, the short question before the trial Court was whether final report / charge sheet was filed within the extended period of 180 days which elapsed on 22.01.2023.

There is no dispute or disagreement or contestation before us that



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charge sheet / final report was filed on the 177th day, i.e., on 19.01.2023.

Therefore, it is clear that the charge sheet / final report has been filed within the extended period of 180 days and this means that the default bail plea cannot but fail as the plea is shattered like a fallen crystal. Be that as it may, learned counsel for appellant argued before us that the extension of time beyond 90 days vide order dated 19.10.2022 in Crl.M.P.No.3164 of 2022 made by the trial Court is flawed. That would be outside the scope of the captioned appeal and it is for the appellant to challenge that order in a manner known to law, if so advised and if so desired subject to limitation if any. Therefore, we are leaving this question open.

10. As the charge sheet / final report has been filed within the extended period of 180 days, we cannot find fault with the order of the trial Court dismissing the bail plea. To be noted, it is the emphatic say of learned counsel for appellant that bail plea was sought only under Section



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167(2) of Cr.P.C., i.e., default bail. From the allusion supra, it will be clear that we have left open the question of merits of the extension of order of the trial Court extending 90 days to 180 days by allowing the petition made by the prosecution by resorting to Section 43D of UAPA. Likewise we also make it clear that we leave open the grounds that have been urged in the second bail petition before trial Court as they never fell for consideration. It is open to the appellant to file another bail petition canvassing changed circumstances, if any as well as grounds that have been urged in the second bail petition as the same never saw the light of the day. This is more so as it is admitted position of both sides that the second bail petition (out of which captioned appeal arises) was argued only on default bail plea and not on merits as a regular bail though the petition was originally presented as a regular bail petition under Section 439 of Cr.P.C. articulating very many points other than default bail plea.



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11. Ergo, the sequitur of the discussion and dispositive reasoning

thus far is, captioned Crl.A. is dismissed albeit preserving the rights of the appellant and leaving open questions to the limited extent indicated supra elsewhere in this order.

(M.S.,J.)

(M.N.K.,J.)

03.04.2023

Index : Yes / No

Internet : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

rsi

To

1.The Deputy Superintendent of Police,
Crime Branch – Erode North District,
Erode.

2.The Principal District and Sessions Judge
Erode.

3.The Public Prosecutor,
High Court, Madras.



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M.SUNDAR, J.
and
M.NIRMAL KUMAR, J.

rsi

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