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Crl.A.Nos.265, 528 & 529 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.11.2023

Pronounced on : 12.12.2023

CORAM

**THE HONOURABLE MR. JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Criminal Appeal Nos.265, 528 & 529 of 2023

1. Naveen @ Naveen Chakravarthi ...Appellant
in Crl.A.No.265 of 2023/A1
2. Sanjai Prakash ...Appellant
in Crl.A.No.528 of 2023/A2
3. A.Kabilar @ Kabilan ...Appellant
in Crl.A.No.529 of 2023/A3

Vs.

Union of India, represented by
The Superintendent of Police,
National Investigation Agency (NIA),
Chennai Branch.
(in R.C.No.33/2022/NIA/DLI) ...Respondent/Complainant
in all the appeals

Prayer in Crl.A.No.265 of 2023: Criminal Appeal filed u/s.21 of National Investigation Agency Act, 2008, to call for records pertaining to Crl.MP No.03 of 2023, on the file of the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) Chennai at Poonamallee dated 27.01.2023 and set aside the same and enlarge the appellant on bail in RC-33/2022/NIA/DLI on the file of the respondent police.



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Prayer in Crl.A.No.528 of 2023: Criminal Appeal filed u/s.21 of National Investigation Agency Act, 2008, to set aside the impugned order in Crl.M.P. No.292 of 2023 in Spl.S.C.No.29 of 2022 dated 14.03.2023 passed by the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) Chennai at Poonamallee, Chennai-56 to secure the ends of justice.

Prayer in Crl.A.No.529 of 2023: Criminal Appeal filed u/s.21 of National Investigation Agency Act, 2008, to set aside the conviction and sentence imposed in Crl.M.P. No.313 of 2023 in Spl.S.C.No.29 of 2022 dated 28.03.2023 passed by the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) Chennai at Poonamallee, Chennai-56 to secure the ends of justice.

For Appellant(s) :
in Crl.A.No.265/2023 Mr.S.Manoharan
in Crl.A.Nos.528 &
529 / 2023 Mr.R.Sankarasubbu

For Respondent : Mr.A.R.L.Sundaresan,
in all appeals Additional Solicitor General
Assisted by Mr.R.Karthikeyan,
Special Public Prosecutor
for NIA cases.

COMMON JUDGMENT

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

All the appellants are accused in Spl.S.C.No.29 of 2022, pending on the file of the learned Judge, Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases),



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Chennai at Poonamallee.

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2. For the sake of convenience, the appellants are referred to as per their ranking before the trial Court.

3. Crl.A.No.265 of 2023 has been filed by A1-Naveen @ Naveen Chakravarthi; Crl.A.No.528 of 2023 has been filed by A2-Sanjai Prakash; and Crl.A.No.529 of 2023 has been filed by A3-Kabilar @ Kabilan. All the appeals are taken up together as the issues involved in the above appeals are identical.

4. The brief facts leading to the filing of the above appeals are as follows:

(i) A1 and A2 were arrested by the Tamil Nadu Police on 19.05.2022 during a routine vehicle checkup and two country made pistols, ammunition and gun powder were recovered from them. An FIR in Cr.No.302 of 2022 dated 19.05.2022 was registered on the file of Omalur Police Station, Salem for the offences under Sections 25(1)(a), 25(1)(AA) and 25(1B)(a) of the



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Indian Arms Act, 1959, and Section 4 of the Explosive Substances Act, 1908. On 19.05.2022 the Omalur Police found that A3 was also involved in the offences and arrested him on 01.06.2022.

(ii) On 03.06.2022, the Director General of Police, Tamil Nadu transferred the case to the 'Q' Branch CID for further investigation. The 'Q' Branch CID re-registered the case in Cr.No.1 of 2022 under Sections 25(1)(a), 25(1AA), and 25(1B)(a) of the Arms Act, 1959, and under Section 4(a) of the Explosive Substances Act, 1908, on 24.06.2022 and took up investigation on 24.06.2022.

(iii) On 22.07.2022, the Central government entrusted the investigation to the respondent herein, the National Investigation Agency (NIA), and the respondent re-registered the FIR in RC.No.33/2022/NIA/DLI (Omalur PS Arms Case) for offences under Sections 25(1)(a), 25(1AA), and 25(1B)(a) of the Arms Act, 1959, and under Section 4(a) of the Explosive Substances Act, 1908 on 25.07.2022 and took up the investigation.

(iv) On 29.07.2022, A3 was released on bail by this Court in



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Crl.O.P.No.17786 of 2022. However, only the State police were shown as respondent and the NIA, the present respondent, was not shown as a respondent.

(v) During the course of the investigation, the respondent found that the accused were involved in the offences under the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'UA (P) Act') and altered the FIR, adding the provisions of the UA (P) Act. In October 2022, the respondent moved an application to re-arrest A3, as grave offences were made out against him.

(vi) On 11.11.2022, the respondent filed the final report against all the accused/appellants for the offences under Sections 120-B of IPC, read with sections 25(1)(a), 25(1AA), and 25(1B)(a) of the Arms Act, 1959 and under Section 4(a) of the Explosive Substances Act, 1908, Sections 13, 17, 18, 18-B, 20, 38, and 39 of the Unlawful Activities (Prevention) Act, 1967, and Sections 121, 121A, 122 and 123 of IPC.

(vii) On 29.11.2022, this Court granted permission to the respondent



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to re-arrest A3. On 13.12.2022, the learned Special Judge, Poonamallee, issued an NBW against the accused on 16.12.2022 and the respondent re-arrested A3. All the appellants filed separate bail applications before the learned Special Judge and the learned Special Judge found that if the petitioners are enlarged on bail, there is a possibility of their fleeing from justice, which may hamper the on-going further investigation and tamper with the evidence; that the accused may influence and threaten the witnesses including the protected witness; and that the accused may again indulge in the same offence. The learned Judge also found that the appellants have been charged for the offence falling under Chapters IV and VI of the UA(P) Act, and since the final report discloses a prima facie case, the appellants were not entitled to bail.

(viii) Aggrieved by the dismissal of their bail applications, the accused have preferred the above appeals.

5. (i) The case of the prosecution as revealed during the investigation and as stated in the final report is that the accused persons/appellants were



inspired by a proscribed terrorist organisation called LTTE (Liberation of Tamil Tiger Eelam) and its leader; that they associated themselves with the said terrorist organisation and wanted to create an organisation similar to LTTE and wage war against the Government of Tamil Nadu / Government of India, through armed struggle, and in order to achieve their objective, they had contacted one Seelan Murugan of Germany (allegedly a member of the Intelligence section of banned LTTE).

(ii) It is the further case of the prosecution that the accused persons had planned and done preparatory work to commit terrorist acts, and for that purpose, decided to manufacture country made pistols, riffles, bullets, pipe bombs, grenades and mixture of explosives for making pipe bombs and planned to start an organisation called 'World Tamil Justice Court' (WTJC). Their objective, according to the prosecution, was to destroy private commercial sand quarry sites and TASMAL wine shops in Salem, as they believed that the persons involved were plundering natural resources and causing a social menace.



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(iii) In order to prove the conspiracy hatched by the appellants, the respondent had examined several witnesses and also seized incriminating materials, which show that the appellants had taken training in manufacturing guns, preparing bombs and other lethal weapons.

(iv) It is further the case of the prosecution that the appellants chose 18.05.2022 as the date marked for 'Mullivaikkal Remembrance Day', which is being observed by Sri Lankan Tamil people and supporters of the LTTE to pay homage to those who died in the final stages of the Sri Lankan Civil War.

(v) The prosecution thus stated that the accused, with the intention to threaten the sovereignty of the State and to wage war against the Governments lawfully established, had indulged in preparatory acts by preparing bombs, etc. Therefore, they had committed the offences under the UA(P) Act.

6. (i) Mr.Sankarasubbu, the learned counsel for the appellants in



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Crl.A.No.265 of 2023, submitted that the appellants' objective was not to commit any terrorist act; and that their object was to fight against illegal sand quarrying and against the State TASMAL shops. The appellants can at best be tried only for the offence under the Explosive Substances Act, the Indian Arms Act, and the IPC, and the invocation of the offence under the UA(P) Act, is unwarranted.

(ii) The learned counsel for the appellant submitted that A1 and A2 are in custody from May 2022, and A3, who was originally arrested in June and released on bail in July was rearrested in December 2022, and he has also been in custody for more than a year.

(iii) The learned counsel further submitted that the charges are yet to be framed, though the final report was filed as early as November 2022 and the prosecution has cited nearly 116 witnesses. Continuous pre trial detention of the appellants would offend their fundamental rights under Article 21 of the Constitution of India.

(iv) The learned counsel also relied upon the following judgments of



the Hon'ble Supreme Court in support of his submission that unless an act committed by the accused is done with the requisite intention stipulated in Section 15 of the UA(P) Act, the act cannot be said to be a terrorist act, and therefore, pleaded for the grant of bail to the appellants.

(i) Usmanbhai Dawoodbhai Memon and others Vs. State of Gujarat, reported in (1988) 2 SCC 271;

(ii) Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijjaya and Others, reported in 1990 (4) SCC 76; and

(iii) Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others, reported in (1994) 4 SCC 602.

7. (i) Mr.A.R.L.Sundaresan, the learned Additional Solicitor General per contra submitted that the accused cannot indulge in illegal activities and claim that their objective was laudable, i.e. to curb illegal sand mining and attack TASMALC shops and that no person can take the law into his own hands.

(ii) The learned Additional Solicitor General pointed out the statements made by the witnesses, including the protected witnesses, to



show that all the accused had manufactured guns and explosives and were in possession of several illegal weapons.

(iii) The learned Additional Solicitor General also pointed out to the various incriminating materials seized during the course of the investigation from the possession of the accused, which would confirm that the allegations in the final report, are more than *prima facie* true.

(iv) The learned Additional Solicitor General relied upon the observations made by the Hon'ble Supreme Court in ***Mohd. Jamiludin Nasir Vs. State of Bengal***, reported in (2014) 7 SCC 443, wherein the Hon'ble Supreme Court in similar circumstances held that the acts of the appellants would amount to 'waging of war' against the government lawfully established.

(v) The learned Additional Solicitor General further submitted that even assuming without admitting that the act would not amount to a terrorist act, since the appellants have committed offences under the Explosive



Substances Act, Indian Arms Act, and Indian Penal Code, for waging war against the Government, they are not entitled to discretionary relief even under Section 439 Cr.P.C.

8. We heard the learned counsel on either side and perused the materials available on record.

9. As stated earlier, it is the case of the prosecution that all the accused conspired together and created an organisation called 'WTJC' similar to LTTE, which is a proscribed terrorist organisation. They were inspired by the ideology of the LTTE and its member, viz., one Seelan Murugan, who belonged to Germany and allegedly a member of the intelligence section of the banned LTTE; that they decided to attack people who work in private sand quarrying mines and TASMAL shops by using illegal fire arms and explosive substances; that they had chosen 18th May 2022, as their first operation day; and to achieve their objective, they purchased materials in and around Salem and through online platforms for manufacturing country-made pistols, rifles, bullets, pipe bombs, grenades, mixtures of explosives



for making pipe bombs, knives, and also extracted poison from water

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10. We have perused the statements of the protected witnesses relied upon by the respondent to show *prima facie* material against the appellants.

(i) LW30, Protected Witness 'F' had stated that A1 was his close friend; that A1 told him that they must all join LTTE and make a revolution in Tamil Nadu; and that they used to talk about eliminating those who were destroying hills and mines and the persons working in TASMACH shops run by the Government of Tamil Nadu.

(ii) Similarly, LW31, Protected Witness 'G', has stated that A2 had sent videos through WhatsApp that glorified LTTE and its chief; and that A2 had asked him to support LTTE and work for the said proscribed organisation.

(iii) LW34, Protected Witness 'D' had stated that A1 sent videos



showing that there was a fire arm testing and bomb testing done by the accused; and that he had also seen A1 assembling a hand-made pistol. He had further stated that the accused asked him to join the organisation called 'WTJC', whose ideology was similar to that of LTTE.

(iv) LW70, Protected Witness 'H', and LW81, Protected Witness 'E' have also stated about the affinity expressed by the appellants towards LTTE. LW81, Protected Witness 'E', has further stated that A3 had threatened him not to disclose any information to NIA officials and that he would face dire consequences, if he did so.

(v) The statements of LW82, Protected Witness 'A' and LW116, Protected Witness 'T' and LW104, Protected Witness 'C' are similar to the statements of the other protected witnesses.

11. We also find from the documents relied upon by the prosecution that certain materials were collected to establish that the accused were planning to destroy commercial Government establishments and also target



public functionaries; that the accused had conducted test explosions and test firing on several occasions; that they had materials and books that stated how bombs and guns, should be manufactured.

12. From the above materials, we find that there are *prima facie* materials to show that all the accused had planned to commit an illegal act, viz., to attack the persons carrying on illegal sand mining and running TASMAL shops, by using bombs, guns and knives etc. The materials also disclose that they were all inspired by the proscribed terrorist organisation i.e., LTTE and had formed an organisation called 'WTJC'. The allegations in the final report is that the objective of the accused and materials seized from them would show that they conspired, prepared, and collected funds for the commission of various terrorist acts and therefore, they are liable for offence under Chapters IV and VI of the UA (P) Act.

13. There is a statutory restriction under the proviso to Section 43 – D (5) of the UA (P) Act, while considering the bail application. Before we analyse the facts to ascertain whether the appellant is entitled to bail in view



of the statutory limitations, the nature of the said limitations has to be understood. The Hon'ble Supreme Court had occasion to consider this aspect in a few cases.

(a). In ***National Investigation Agency Vs. Zahoor Ahmad Shah***

Watali reported in (2019) 5 SCC, the Hon'ble Apex Court held as follows:

“23.By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to the offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is “not guilty” of the alleged offence. There is a degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is “not guilty” of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is “prima facie” true. “By its very nature, the expression “prima facie true” would mean that the materials/evidence collaged by the investigating agency in



reference to the accusation against the accused concerned in the first information report, must prevail until contradicted and overcome or disproved by other evidence, (emphasis supplied) and on the fact of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is “prima facie true,” as compared to the opinion of the accused “not guilty” of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.”

(emphasis supplied)

(b). In Paragraph 24 of the ***National Investigation Agency Vs. Zahoor Ahmad Shah Watali's case*** (cited supra), the Hon’ble Supreme Court held as follows:

“24. *A priori, exercise to be undertaken by the Court at this stage of giving reasons for grant or non - grant of bail is markedly different from discussing merits or demerits of the evidence. The elaborate examination or dissection of the evidence is not required*



to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the accused in the commission of the stated offence or otherwise."

(c). In the above case, the Hon'ble Supreme Court had relied upon the observations made in an earlier three Bench Judgment in ***Ranjitsing Brahmajeetsing Sharma V. State of Maharashtra***, reported in (2005) 5 SCC 294 while interpreting Section 21 (4) of Maharashtra Control of Organised Crime Act, 1999. It is worthwhile to extract the relevant observations made therein:

"44. The wording of Section 21 (4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the appellant has not committed such an offence. In such an event, it will be possible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature."

(d). Further in ***Thwaha Fasal Vs. Union of India***, reported in (2021) SCC Online SC 1000 the Hon'ble Supreme Court held as follows:



“20. Therefore, while deciding a bail petition filed by an accused against whom offences under Chapters IV and VI of the 1967 Act have been alleged, the Court has to consider whether there are reasonable grounds for believing that the accusation against the accused is prima facie true. If the Court is satisfied after examining the material on record that there are no reasonable grounds for believing that the accusation against the accused is prima facie true, then the accused is entitled to bail. Thus, the scope of inquiry is to decide whether prima facie material is available against the accused of commission of the offences alleged under Chapters IV and VI. The grounds for believing that the accusation against the accused is prima facie true must be reasonable grounds. However, the Court while examining the issue a prima facie case as required by sub section (5) of Section 43 D is not expected to hold a mini trial. This Court is not supposed to examine the merits and demerits of the evidence. If a charge sheet is already filed, the Court has to examine the material forming a part of charge sheet for deciding the issue whether there are reasonable grounds for believing that the accusation against such a person is prima facie true. While doing so, the Court has to take the material in the charge sheet as it is.” (emphasis supplied).

e). This Court also finds that in ***Union of India Vs. K.A.Najeeb*** (Crl.A.No.98 of 2021, decided on 01.02.2021), the Hon’ble Supreme Court observed as follows:



“18. It is thus clear to us that the presence of statutory restrictions like Section 43 – D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safegaurd against the possibility of provisions like Section 43 – D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

14. After referring to the observations made in the aforesaid judgments, while considering a similar bail application under the UA(P) Act, in Crl.A.No.340 of 2023, this Court in its order dated 09.11.2023 had made the following observations.

*“7. Thus, from the observations made in the above judgments, it can be seen that in **National Investigation Agency Vs. Zahoor Ahmad Shah Watali's case** (cited supra), the Hon'ble Supreme Court had observed that the degree of satisfaction to hold*



that there is a prima facie case for denying bail would differ from the degree of satisfaction to dismiss a discharge petition on the ground that there is a prima facie case. While considering a discharge petition and assessing the prima facie case, it is trite law that even grave suspicion is sufficient to frame a charge. However, we are of the view that while denying the liberty of a person, the test to assess the prima facie case would be different. The liberty of a person cannot be denied on grave suspicion alone. The Act specifically employs the words “reasonable grounds for believing that the accusation against such a person is prima facie true”. Further, we are of the view that the accusation must be not only grave, but the materials in support of the accusation must be cogent at whatever stage the bail application is considered. Thus, there must be something more than grave suspicion while holding that there is a prima facie case to deny bail. The Judgements referred to above would also indicate that the above restriction in the proviso to Section 43 D (5) of the UA (P) Act is a slight departure from the bail jurisprudence, namely that bail is the rule and the jail is an exception. It only means that while considering a bail application, the Courts cannot grant bail on mere asking, and there must be reasons for the grant of bail. However, the above restriction found in the proviso to 43 (5) of the UA(P) Act cannot be read to mean that the basic human right or the constitutional right of a person is taken away. Pre-trial detention is an anathema to the Constitution besides being in violation of the basic human right. The Judgments referred to above would also indicate that where the Constitutional Courts find that there is an infraction of



the fundamental right under Article 21 of the Constitution of India, the rigours of the proviso would melt down. As to when pre-trial detention would amount to a violation of Article 21 of the Constitution of India, would depend on the facts and circumstances of each case. In one case, the pre-trial detention, even for six months may be in violation of Article 21 of the Constitution of India. In yet another case, pre-trial detention of even three years would not amount to a violation of Constitutional right. This would depend on the gravity of the offence alleged, the role played by the particular accused, the nature of the evidence relied upon by the prosecution, and the probable punishment that could be imposed on the said accused. The liberty of a person pending trial cannot be ordinarily curtailed unless the law and facts warrant such curtailment.

15. The question is, on the above materials, whether a *prima facie* case is made out for the commission of the offences under the UA(P) Act linked to a terrorist act. For that purpose, we need to understand the definition of terrorist act under the UA (P) Act. Section 15 of the UA(P) Act reads as follows:

15. Terrorist act. —(1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—



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(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

- (i) death of, or injuries to, any person or persons; or
- (ii) loss of, or damage to, or destruction of, property; or
- (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
- (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act or commits a terrorist act.

Explanation. —For the purpose of this sub-section-

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as a public functionary;



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(b) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.

(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule].

16. Therefore, unless the act is committed with the requisite intention by any of the methods mentioned in 15(1) (a) (i), (ii) and (iii), (b) and (c) of the UA(P) Act, the act cannot be termed a terrorist act.

17. The learned counsel for the appellant referred to the observations made by the Hon'ble Supreme Court in (i) Usmanbhai Dawoodbhai Memon and others Vs. State of Gujarat, reported in (1988) 2 SCC 271; (ii) Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijjaya and Others, reported in 1990 (4) SCC 76; and (iii) Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others, reported in (1994) 4 SCC 602, in support of his submission that unless the act is committed with the requisite intention mentioned in the provisions contained in the terrorist act,



the usage of bombs and other overt acts, can be dealt with by the ordinary criminal law and there is no necessity to invoke the stringent provisions of the Terrorist Act. There cannot be any quarrel with the preposition of the law laid down in the aforesaid judgments.

18. In Section 3 of TADA, the act must have been conducted with the intent to overawe the Government as by law established, or to strike terror in the people or any section of the people, or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people, by using bombs, dynamite, etc. However, under Section 15 of the UA(P) Act, the act must be committed with intent to threaten the unity, integrity, security, or sovereignty of India, or it must have been committed with intent to strike terror or be likely to strike terror in the people or any section of the people in India or in any foreign country.

19. However, in the final report, the respondent has stated that the accused had manufactured bombs and illegal fire arms to attack the quarries, crushers, and wine shops in Salem, as well as the people working there. No



doubt, the said acts committed by the accused, are illegal and would be offences under the Explosive Substances Act, the Indian Arms Act, and the Indian Penal Code. In order to attract the offences under Section 15 of the UA(P) Act, it must be specifically averred as to whether the act was intended to either threaten the unity, integrity, security, or sovereignty of India or to strike terror in the minds of the people or in a section of the people. We find no such assertion in the final report. It is for the prosecution to prove during trial that the accused conspired or planned to commit acts with the requisite intention provided under Section 15 of the UA(P) Act. Further, on facts, we find that there is no physical manifestation of the alleged conspiracy, i.e., there is no attack made by the accused on any mines or TASMACH shops.

20. As regards the offences under Sections 38 and 39 of the UA(P) Act, we find that even according to the prosecution as per the charge sheet, the accused were in touch with one Seelan Murugan, who is allegedly a member of the intelligence section of the banned LTTE, against whom, no final report has been filed, and the prosecution has not established that the said Seelan Murugan is a member of the LTTE. The prosecution has stated



in paragraph No.17.5 of the final report as follows:

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“Seelan Murugan of Germany (allegedly a member of Intelligence section of banned LTTE), one Kishok and other suspects of LTTE members.”

21. The use of the words 'allegedly', confirms the fact that the respondent themselves are not clear about the said fact. The statements no doubt disclose that all the accused were inspired by the ideology of the LTTE and had spoken about joining the said organisation. Further, we find that there is nothing on record to show that the accused had planned anything to further the activities of the proscribed terrorist organisation, which is essential in order to attract the offences either under Section 38 or 39 of the UA(P) Act. In this regard we may refer to the observations made by the Hon'ble Supreme Court in *Thwaha Fasal's case*, at paragraph No.19, which is extracted hereunder.

“19. Thus, the offence under sub-section (1) of Section 38 of associating or professing to be associated with the terrorist organisation and the offence relating to supporting a terrorist organisation under Section 39 will not be attracted unless the acts specified in both the Sections are done with intention to further the activities of a terrorist organisation. To that extent, the requirement of mens rea is involved. Thus, mere association with a terrorist organisation as a member or otherwise will not be sufficient to attract the offence under Section 38 unless the association is with intention to further its activities. Even if



an accused allegedly supports a terrorist organisation by committing acts referred in clauses (a) to (c) of sub- section (1) of Section 39, he cannot be held guilty of the offence punishable under Section 39 if it is not established that the acts of support are done with intention to further the activities of a terrorist organisation. Thus, intention to further activities of a terrorist organisation is an essential ingredient of the offences punishable under Sections 38 and 39 of the 1967 Act.”

22. In the instant case, the materials relied upon by the prosecution do not suggest such an inference. Therefore, considering the broad probabilities of the case, bail cannot be denied on the basis of the accusation in the final report and the materials in support of this accusation. However, we may add that the observations made by us in this regard are only for the purpose of considering the bail applications and would not affect the right of the respondent to establish their case before the trial Court.

23. We find another aspect in this case that, though the final report was filed on 11.11.2022, the charges are yet to be framed. On a specific query made by us to why charges have not been framed, the respondent is unable to specify any particular reason. We find from the final report, that the prosecution has cited 160 witnesses, and therefore, the trial is not likely



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to be completed in near future. The appellants, therefore, cannot be kept in detention pending trial for indefinite period.

24. Further, A1 and A2 are in custody from May 2022 and A3 who was in custody for two months between 01.06.2022 and 29.07.2022 and thereafter from December 2022. Though the learned Additional Solicitor General submitted that A3's case would be different as he had absconded after the grant of bail and he had also threatened the witnesses, considering the period of incarceration and the facts and circumstances, we are of the view that A3 can also be released on bail on stringent conditions.

25. As stated earlier, even if the acts planned or conspired to be committed by the appellants can be termed to be terrorist acts, since they are likely to cause terror in a section of the people (though, the charge sheet does not states so) and the materials collected by the prosecution may ultimately lead to conviction, the detention pending trial cannot be indefinite. We have already referred to the observations of the Hon'ble Supreme Court in *Union of India Vs. K.A.Najeeb's case* (cited supra), wherein it has been



held that the rigours of 43 – D (5) of the UA(P) Act, would be diluted if the accused had been incarcerated for a long time. In the instant case, since the appellants are in the custody for nearly one year, we are inclined to exercise our powers to grant bail to the accused on stringent conditions.

26. Therefore, for the above reasons, these appeals deserve to be allowed, and the accused are set at liberty on the following conditions:

(i) Each of the appellant shall execute a bond and furnish two sureties for a likesum of Rs.50,000/- [Rupees Fifty Thousand only] each and one of the sureties should be a blood relative to the satisfaction of the learned Judge, Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) Chennai at Poonamallee;

(ii) After coming out from jail, the appellants shall stay at Chennai and shall not leave the Chennai city without the permission of the trial court;

(iii) The appellant shall appear and sign before the respondent police every day at 10.30 a.m. until further orders and shall appear before the trial Court on all hearing dates;

(iv) The appellants shall surrender their Passport (if any) before the trial court and if they do not hold a passport, they shall file an affidavit to that effect in the form that may be



prescribed by the trial court. In the latter case the trial court will if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify their records and send a reply within three weeks. If they fail to reply within the said period, the trial court will be entitled to act on the statement of the appellants;

(v) The appellants shall cooperate with the investigation;

(vi) The appellants shall not tamper with evidence and indulge in any other activities which are in the nature of preventing the investigation process;

(vii) The appellants shall inform the trial court the address where they reside and if they change their address, it should be informed to trial court and to the respondent police;

(viii) The appellants shall use only one mobile phone during the time they remain on bail and shall inform the trial court and respondent police, their mobile numbers;

(ix) The appellants shall also ensure that their mobile phone remains active and charged at all times so that they remain accessible over phone throughout the period they remain on bail;

(x) The trial court will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out.



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(S.S.S.R., J.) (S.M., J.)

12.12.2023

Index : yes / no

Speaking/Non-Speaking Order

Neutral citation : yes/no

ars **(Issue order copy today)**

Copy to:

1. The Judge,
Special Court under NIA, 2008,
(Sessions Court for Exclusive Trial of Bomb Blast Cases),
Chennai at Poonamallee.
2. The Superintendent of Police,
National Investigation Agency (NIA),
Chennai Branch.
3. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



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Crl.A.Nos.265, 528 & 529 of 2023

S.S. SUNDAR, J.
AND
SUNDER MOHAN, J.
ars

Pre-delivery CommonJudgment in
Crl.A.Nos.265, 528 & 529 of 2023



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Crl.A.Nos.265, 528 & 529 of 2023

Dated: 12.12.2023



Crl.A.Nos.265, 528 & 529 of 2023

Crl.A.Nos.265, 528 & 529/2023

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S.S.SUNDAR, J.

AND

SUNDER MOHAN, J.

[Order of the Court was made by S.S.SUNDAR, J.,]

After pronouncement of the judgment in the above criminal appeal, the learned counsel for the appellants requested this Court that a direction may be given to the Trial Court to accept sureties on the basis of the web copy of the judgment.

2. Accordingly, the following direction is given to the Trial Court:-

"It is made clear that the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee, shall accept the sureties on the basis of the web copy to be produced by the Advocates/parties."

[S.S.S.R., J]

[S.M., J]

12.12.2023

AP