



Crl.A.No.879 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

Crl.A.No.879 of 2022

Shahul Hammed @ Shahul Hammed Khan
@ Anwar @ Annu ... Appellant

-VS-

Union of India rep. by
The Deputy Superintendent of Police,
National Investigation Agency,
Chennai.
[R.C.No.33/2018/NIA/DLI] ... Respondent

Criminal Appeal filed under Section 21 of NIA Act to call for the records in Crl.M.P.No.130 of 2022 dated 25.03.2022 in C.C.No.1 of 2019 on the file of Special Court under the NIA Act, 2008, Chennai at Poonamallee and set aside the same and release the appellant.

For Appellant .. Mr.P.Pugalenth
For Respondent .. Mr.R.Karthikeyan
Special Public Prosecutor
for NIA Cases



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JUDGMENT

WEB COPY [Judgment of the Court was made by M.NIRMAL KUMAR, J.]

This appeal has been filed by Accused No.6 in C.C.No.1 of 2019 challenging the order passed in Crl.M.P.No.130/2022 dated 25.03.2022.

2.The case is that the appellant who is arrayed as Accused No.6 was charged under Section 38 of 'the Unlawful Activities (Prevention) Act, 1967 [Act 37 of 1967]' [hereinafter 'UAPA' for the sake of convenience and clarity]. Earlier the appellant was granted bail by the Trial Court in Crl.M.P.No.1 of 2019 by order dated 22.02.2019 with certain conditions. Aggrieved against the said order, the respondent filed an appeal before this Court in Crl.A.No.133 of 2019. This Court by judgment dated 21.11.2019 disposed of the appeal directing the Trial Court to complete the trial within a period of six months without disturbing the bail granted by the Trial Court. Thereafter, investigation completed, charge sheet filed and trial is in progress, before the Trial Court in C.C.No.1 of 2019. On 08.03.2022, neither the appellant nor his counsel appeared before the Trial Court and hence Bailable Warrant was issued against the appellant. On the next



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hearing date on 09.03.2022 the appellant appeared, filed a recall petition which was considered on 10.03.2022 and the appellant was directed to furnish sureties as per Section 88 Cr.P.C. On 11.03.2022 when the case was called, the appellant/A6 could not furnish sureties as per Section 88 Cr.P.C. and the case was adjourned to 15.03.2022. Again on 15.03.2022 the appellant was unable to execute sureties and the case was adjourned to 17.03.2022 and thereafter to 22.03.2022. When the case was called on 23.03.2022, neither the appellant nor his counsel was present. Hence Non-Bailable Warrant [hereinafter 'NBW' for the sake of convenience and brevity] was issued considering that as early as on 08.03.2022 when Bailable Warrant was recalled with a condition to execute a bond and furnish sureties as per Section 88 Cr.P.C., the same has not been complied with and for the second time, the appellant absented himself without any representation or any petition. Again, the case was called on 25.03.2023, on which date the petitioner was present, filed a recall petition with a memo and with one surety. Hence finding that the appellant not only absented himself without any condonation and further for non-compliance of the order dated 08.03.2022, the recall petition filed under Section 70(2) Cr.P.C.



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in Crl.M.P.No.130 of 2022 was dismissed and the appellant was remanded to custody. Against which, the present appeal is filed.

3.The contention of the learned counsel for the appellant is that the order passed in Crl.M.P.No.130 of 2022 by the Trial Court dismissing the recall petition is erroneous, improper and illegal. He would submit that the appellant appeared before the Trial Court on hearings, either personally or through his counsel. The trial is not progressed and adjourned periodically. He further submitted that the appellant filed a memo before the Trial Court giving reasons for not producing the sureties immediately. Further, initially when the appellant was granted bail earlier in Crl.M.P.No.1 of 2019, he produced two sureties and thereafter on the satisfaction of the same, bond was accepted and the appellant was released from custody, thereafter the appellant is appearing before the Trial Court regularly and complying with the condition. Learned counsel submit that on one of the hearing, when the appellant was unable to reach the Court in time, NBW was issued and again the onerous condition of executing bond with two sureties was imposed. He further submitted that the appellant hails from Coimbatore and with great



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difficulty he was able to secure only one surety, in addition to the sureties produced earlier. He would further submit that considering the conduct of the appellant, the Trial Court ought to have accepted the recall petition without insisting for sureties but on the contrary, for some reason the recall petition was dismissed and the appellant is confined in Central Prison-II, Puzhal, Chennai. Hence, he prays for allowing the appeal.

4.Learned Special Public Prosecutor filed his counter and strongly opposed this appeal by stating that earlier the appellant was granted bail by the Trial Court by order dated 22.02.2019 in Crl.M.P.No.1 of 2019 with certain conditions and one of the condition is that the appellant should cooperate with investigation. In this case, referring to the adjudication learned Special Public Prosecutor submits that it is seen that all the accused in this case are delaying the trial, taking turns for one reason or other by filing petitions, so far they have successfully stalled the progress of trial. This is one of the reason for the Trial Court imposing condition of sureties for recall of NBW. Only after giving sufficient time, finding that the appellant failed to produce sureties, the appellant was confined to custody.



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Learned Special Public Prosecutor fairly submitted that earlier appellant was granted bail and he is now in confinement due to non-appearance for one of the hearings and failure to execute a bond under Section 88 Cr.P.C. Hence, he prays for dismissal of the appeal.

5.Considering the submissions and on perusal of the materials, we find that the appellant was originally granted bail by the Trial Court in Crl.M.P.No.1 of 2019 on 22.02.2019 with certain conditions. Aggrieved against the same, the respondents filed an appeal before this Court in Crl.A.No.133 of 2019. This Court by order dated 21.11.2019 confirmed the bail granted to the appellant with a condition that the appellant as well as the other accused should participate in the trial and complete the trial without any further delay. It is seen that in this case apart from the appellant there are five other accused, who are yet to engage counsels and they have made representation to the Trial Court seeking Legal Aid Counsel and for this reason, trial could not be progressed. The appellant is in confinement since on 08.03.2022 neither the appellant nor his counsel appeared and Bailable Warrant has been issued. Thereafter, a bond under Section 88



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Cr.P.C. was directed to be executed with two sureties. For execution of bond and production of sureties, it had been periodically adjourned for five hearings from 11.03.2022 to 22.03.2022. On 23.03.2022, again neither the appellant nor his counsel appeared and hence NBW was issued. On the very next hearing on 25.03.2022 the appellant appeared, filed a recall petition with one surety instead of two sureties and for this reason, the appellant has been remanded to custody.

6.At this juncture, learned counsel for the appellant, on instructions, submitted that the appellant is ready to execute two sureties.

7.In view of the above, the order passed by the Trial Court in Crl.M.P.No.130 of 2022 is set aside and the appellant is directed to be released on bail with a condition to execute a bond for Rs.10,000/- [Rupees Ten 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], Chennai at Poonamallee, Chennai – 600 056. All other conditions which are being



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complied with by the appellant prior to 23.03.2022 stands unaltered.

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8.In the result, the Criminal Appeal stands allowed.

(M.S,J.) (M.N.K.,J.)
14.03.2023

Index: Yes/No

Neutral Citation : Yes/No

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To

- 1.The Deputy Superintendent of Police,
National Investigation Agency,
Chennai.
- 2.The Special Court under the
National Investigation Agency Act, 2008
[Sessions Court for Exclusive Trial of Bomb Blast cases],
Chennai at Poonamallee, Chennai – 600 056.
- 3.The Superintendent,
Central Prison-II, Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai – 104.



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**M.SUNDAR, J.
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M.NIRMAL KUMAR, J.**

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