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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

Coram

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Criminal Appeal No. 624 of 2023

Prakash @ Daniel Prakash
S/o.Devasagayam

.. Appellant

Vs

The State represented by
The Additional Deputy Superintendent of Police
Special Investigation Division
Crime Branch CID, Madurai.

.. Respondent

Criminal Appeal filed under Section 21 of National Investigation Agency Act, 2008 against the order passed in Crl.M.P.No.734 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 12.05.2023 and set aside the same and enlarge the appellant on bail in Crime No.1/2023 on the file of the respondent police.

For Appellant

..

Dr.S.Manoharan

For Respondent

..

Mr.A.Gokulakrishnan

Additional Public Prosecutor
assisted by Mr.J.Kalaiselvan

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JUDGMENT

(Judgment of the Court was delivered by M.SUNDAR, J.)

This order will now dispose of the captioned Criminal Appeal.

2. When the captioned criminal appeal was listed before this Bench on 13.06.2023, the following proceedings / orders were made:

'Captioned Criminal Appeal has been filed assailing an 'order dated 12.05.2023 made in Crl.M.P.No.734 of 2023 in Spl.S.C.No.9 of 2022 (C.C.No.7/2014) (CNR No.TNCH06-000734-2023)' on the file of 'Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) Chennai at Poonamallee, Chennai' [hereinafter 'impugned order' and 'trial Court' respectively for the sake of convenience and clarity]. To be noted, in and by impugned order, trial Court has dismissed a regular bail application under Section 439 of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity].

2. Ms.K.Dheepakshi, learned counsel is before us on behalf of appellant on the videoconferencing platform (to be noted, this is a hybrid hearing).



3. Ground No.(viii) in the grounds of appeal placed before us reads as follows:

'viii. At the period of granting bail, the petition had been facing the trial at Bangalore in S.C.No.381/2015 C/W S.C.No.1347/2016 before the Court XLIX Additional City Civil and Sessions Judge (Special Judge for trial of NIA cases), (CCH-50) Bangalore. Therefore, he filed the petition to cancel the bail that itself shows that he is genuine to face the trial. Now the case of trial completed Bangalore and he served out the sentence. Now, he has filed petition for bail.'

(underlining made by this Court for ease of reference)

4. This Court wanted to know from the learned counsel for appellant the details regarding petition to cancel bail and orders passed thereon. This Court also wanted learned counsel to produce copies of the same, if available.

5. Faced with the above situation, learned counsel requested for a short accommodation. Request acceded to.

6. List day-after-tomorrow. List on 15.06.2023 under the cause list caption 'ADJOURNED ADMISSION'.'

3. Thereafter, there were three listings on 15.06.2023, 26.06.2023 and 28.06.2023 when the following proceedings were made:

Proceedings dated 15.06.2023:



'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 13.06.2023.

2. Ms.K.Dheepakshi, learned counsel for petitioner requests for further time to do the needful and bring on board the papers available with her. Request acceded to.

3. List on Tuesday. List on 20.06.2023.'

Proceedings dated 26.06.2023:

'Re-notified.

List day-after-tomorrow.

List on 28.06.2023.'

Proceedings dated 28.06.2023:

'Re-notified.

List on 05.07.2023.'

4. Aforementioned proceedings / orders, more particularly proceedings / orders made on 13.06.2023 shall now to be read as an integral part and parcel of this order and therefore, short references, short forms and abbreviations used in 13.06.2023 proceedings shall continue to be used in the instant order also.

5. Today, Dr.S.Manoharan, learned counsel on record for appellant



and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor assisted by Mr.J.Kalaiselvan, learned counsel and instructed by Ms.T.Pandi Muthulakshmi, Inspector of Police, jurisdictional police station in Tirunelveli are before us.

6. Adverting to earlier proceedings made on 13.06.2023, Dr.S.Manoharan, learned counsel on record for appellant submitted that an additional typed set of papers dated 16.06.2023 (containing 02.05.2016 surrender petition and case status showing 02.05.2016 bail cancellation order) has been filed. To be noted, this additional typed set is on board before us. As regards Special S.C.No.9 of 2022 (C.C.No.7 of 2014) (CNR No.TNCH06-000734-2023) the appellant before us is A12 and he is standing trial for alleged offences under Sections 153A, 109 and 120B of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity] read with Section 5 of the Explosives Substances Act, 1908 and Section 18 of 'the Unlawful Activities (Prevention) Act, 1967' [hereinafter 'UAPA' for the sake of brevity, convenience and clarity].

7. This Bench is informed without any disputation or contestation that



investigation has been completed, final report (charge sheet) has been filed, trial has commenced and prosecution witness No.1 has already been examined.

8. The legal drill on hand is fairly simple as the trial Court has already granted bail to the appellant in and by an order dated 17.12.2015 made in CrI.M.P.No.643 of 2014. To be noted, in the impugned order (paragraph No.12 thereat) the trial Court has said that this earlier order granting bail is not a ground as this earlier bail order was subsequently cancelled by the trial Court in and by order dated 02.05.2016 in C.M.P.No.248 of 2016. However, from the aforementioned additional typed set of papers, we find that 02.05.2016 order of the trial Court cancelling the bail granted to the appellant is owing to surrender and willingness of the appellant for cancellation of bail, more importantly, the appellant himself sought cancellation of bail to enable him to stand trial in Bangalore i.e., Crime No.118 of 2013 on the file of Bangalore City, Vayalikalaval Police Station. Pursuant to 02.05.2016 surrender petition filed by the appellant, the trial Court made the cancellation of bail order and the same as culled out from



the official website is as follows:

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SEARCHED BY Case Number

11:50 AM

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Daily Status
Sessions Court for the exclusive trial of Barb Elbat Cases and AIA Cases, Poonamallee
In the court of Mr. SATHISH JUDGE
CNR Number: 00120100032013
Case Number: SP_5000000000023
The Sheeted by its Additional Superintendent of Police: S.D. CB CID, Madurai, versus: Mohammed Taseel
Date: 11-06-2016

Business	A12 Prakash G. Chelva Prasad, summoned today. Case advanced on previous hearing petition. Summons accepted. Bail granted to the accused on 17.12.15 in Cr.P.No.843/14 is cancelled on his request and will ingress. A12 is remanded in custody on 17.12.15 at Central Prison, Palayamkottai. Call on 30.6.16. Cr.P.No.843/16 - Summons petition of A12 - Accused summoned today through his Advocate Mr. A. Rajasekar. Argued the accused. He stated that he is willing to surrender and ready to go to jail. Hence summons accepted in view of the surrender and his willingness to accept the bail. The bail granted to the accused on 17.12.2015 in Cr.P.No.843/2014 is cancelled and the accused is remanded in judicial custody on 22.06.16 at Central Prison, Palayamkottai. Cr.P.No.843/15 Petition to advance the hearing of the case - Allowed.
Next Purpose	Codes
Next Hearing Date	30-06-2016
	SESSIONS JUDGE

9. Therefore, the sheet anchor ground on which the bail was rejected i.e., substratum of the impugned order made by the trial Court i.e., the ground that grant of earlier bail order cannot be taken into account as the same was cancelled pales into insignificance. This is the reason why we opened with the observation that the legal drill on hand or in other words, the task of disposing of the captioned appeal is fairly simple.

10. Adverting to grounds of appeal and case file before us, learned counsel for petitioner submitted that out of 19 accused in the trial Court as



many as 9 accused have already been enlarged on bail by three different orders made by this Hon'ble Court. The details as captured in paragraph No.10 of earlier bail order granted by trial Court is as follows:

'10..... In this case there are 19 accused and out of which A1 to A5 was released on bail by the Hon'ble High Court of Madurai Bench of Madras in Crl.O.P.(MD) Nos.3432, 3433, and 4571 of 2014 by orders dated 25.07.2014; A6, A7 and A10 was released on bail by the Hon'ble High Court of Madurai Bench of Madras in Crl.O.P.(MD)Nos.8181, 10047 and 6843 of 2015 by orders dated 03.07.2014; and A13 was released on bail by the Hon'ble High Court of Madurai Bench of Madras in Crl.O.P.(MD) No.21507 of 2014 by orders dated 06.03.2015.'

11. To be noted, there is no disputation about aforementioned factual position and there is no complaint of any untoward occurrence as regards those out on bail and there is no complaint of trial being impeded or derailed.

12. Be that as it may, learned counsel for appellant submitted that the appellant has been incarcerated for over 10 years now. In this regard, learned counsel pointed out that the sentence awarded by Bangalore Court is



7 years and appellant remains in incarceration for over 10 years now.

WEB COPY 13. Learned Prosecutor, adverting to objections and more particularly, paragraph No.6 thereat drew our attention to the tabulation set out in paragraph No.6 thereat and submitted that the appellant is involved in more than one criminal case, therefore we deem it appropriate to extract and reproduce this tabulation (as in the objections of the State) and the same is as follows:

S. No.	P.S. & Crime No.	Section of Law	Stage
1.	Kanyakumari PS Cr.No.118/2019	u/s. 120(b), 379 IPC	PT, CE No. 121/2010, JM T, Nagercoil.
2.	Cheranmadhavi PS Cr.No. 129/2010	u/s. 294(b), 324, 307, 506(ii) IPC r/w 25 Arms Act	Acquitted on 27.04.2018
3.	Veeravanallur PS Cr.No. 60/2012	u/s. 294(b), 323, 324, 506(ii) IPC	Acquitted on 27.11.2017.
4.	Veeravanallur PS Cr.No. 106/2012	u/s. 294(b), 324, 506(ii) & 379 IPC	Uncontested Settled through Lok Adalat on 22.04.2018
5.	Veeravanallur PS Cr.No. 88/2013	u/s. 379 IPC	Disposed on 27.11.2017.
6.	Erugudara City Vayalikkavai PS Cr.No.118/2013	u/s 120(b), 121, 121(A), 123, 307, 332, 435, 201 IPC 3, 4, 5, & JFS Act 1984 3 & 4 Prevention of Damage to Public Property Act 3,10, 11, 13, 16, 17, 18, 19,20 Unlawful Activities of Prevention Act 1967	Convicted on 21.04.2023 17 years and Rs.50,000/- fine)
7.	Tirunelveli OCU CBCID Cr. No.01/2013	U/s 153(A), 109, 120(b)IPC R/W 5 of IES Act 1908 & 18 of Unlawful Activities of Prevention Act 1967 & 25 (1- 4) Arms Act 1989	PT, Spl.SC No.09/2022, BBC Court, Poonamallee, Chennai.



14. A careful perusal of the tabulation shows that six cases have been cited besides the case on hand. To be noted, S.No.7 in the tabulation is the case on hand i.e., case out of which the captioned appeal arises. As regards six other cases, two have ended in acquittal and one has been settled through Lok Adalat all in 2017 and 2018. One other case namely, S.No.5 is shown as disposed of on 27.11.2017 but we are informed that, it appears to be a closure as mistake of fact. That leaves us with only one conviction i.e., aforementioned conviction (7 years sentence) by the Bangalore Court vide Crime No.118 of 2013 Bangalore City, Vayalikaval Police Station. As already alluded to supra, the sentence is 7 years and the appellant has already remained incarcerated more than 10 years as an undertrial. This means that effectively only one criminal case is pending trial, that is Crime No.118 of 2010 on the file of Kanyakumari Police Station. That we are given to understand is for alleged offences under Section 379 IPC read with 120B. It is before learned Judicial Magistrate and maximum punishment is only 3 years. Therefore, other than one criminal case for alleged offences under Sections 379 IPC read with 120B for which maximum punishment is only 3 years, there is no other criminal case pending against the appellant.



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15. This Court is informed that the aforementioned other 9 accused who have been enlarged on bail by three different orders made by different Hon'ble Benches of this Court are complying the conditions and the trial is proceeding (as already alluded to supra).

16. In the light of the narrative thus far, we deem it appropriate to interfere with the impugned order and we are of the view that this is a fit case for grant of bail.

17. The following order is made :

(i) The impugned order dated 12.05.2023 made in CrI.M.P.No.734 of 2023 in Spl.S.C.No.9 of 2022 (C.C.No.7 of 2014) (CNR No.TNCH06-000734-2023) 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 Poonamalee, Chennai-56 is set aside;



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(ii) The appellant is enlarged on bail subject to conditions

which are adumbrated infra in other sub-paragraphs;

(iii) Appellant will stay at his residence in Tirunelveli namely, Door No.9/2, Nadar Theru, Melapudukudi, Karukurichi, Tirunelveli Distret (learned counsel for appellant has submitted without disputation that this is appellant's own house);

(iv) Appellant shall sign on the first working day of every week i.e., Monday at 10.30 a.m. (the next working day if Monday happens to be a public holiday) before Special Investigation Division, CBCID Inspector of Police, Tirunelveli;

(v) The appellant shall execute a bond and furnish two sureties for a sum of Rs.10,000/- each (one of the sureties should be a blood relative) to the satisfaction of the trial Court i.e., Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) Chennai at Poonamalee, Chennai-56;



(vi) If Special S.C.No.9 of 2022 (C.C.No.7 of 2014)

WEB COPY (CNR No.TNCH06-000734-2023) is listed on Monday, the appellant will be exempted from signing before Special Investigation Division, CBCID Inspector of Police, Tirunelveli but shall sign on the next available working day in that week;

(vii) If C.C.No.121 of 2010 is listed before the learned Judicial Magistrate No.I, Nagercoil on Monday, it will be open to the appellant to file a petition under Section 317 of Cr.PC and learned Magistrate shall take into account the conditions that have been imposed by this Court in considering Section 317 petition;

Captioned Criminal Appeal ordered and disposed of on above terms.

(M.S.J.) (R.S.V.J.)
05.07.2023

Index: Yes
Speaking
Neutral Citation: Yes
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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Parappana Agraharam, Bangalore.

M.SUNDAR, J.

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and
R.SAKTHIVEL, J.

mk

To

1. The State represented by
The Additional Deputy Superintendent of Police
Special Investigation Division
Crime Branch CID, Madurai.
2. The Public Prosecutor,
High Court, Madras.

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05.07.2023

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