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CRL.A.NO.761 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**CRL.A.NO.761 OF 2023
AND
CRL.M.P.NO.10472 OF 2023
IN
CRL.A.NO.761 OF 2023**

Rizwan Mohammed

.. Appellant

Vs

Union of India
Rep. By Inspector of Police
National Investigation Agency
Chennai.
(R.C.No.01/2019/NIA/DLI)

.. Respondent

PRAYER: Criminal Appeal filed under Section 21(1) of National Investigation Agency Act, 2008 to set aside the order passed in Crl.M.P.No.463/2022 in Spl.S.C.No.25/2022 dated 21.03.2023 on the file of the Hon'ble Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial For Bomb Blast Cases, Chennai at Poonamallee, Chennai as illegal.



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For Appellant : Mr.I.Abdul Basith
For Respondent : Mr.R.Karthikeyan
Special Public Prosecutor (NIA)

JUDGMENT

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

This common consent judgment / order will now dispose of the captioned main 'Criminal Appeal' [hereinafter 'Crl.A' for the sake of convenience and brevity] and captioned 'Criminal Miscellaneous Petition' [Crl.MP' for the sake of convenience and brevity]. In this order, 'Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases Chennai at Poonamallee' shall hereinafter be referred to as 'said trial court' and 'Crl.M.P.No.463/2022 in Spl.S.C.No.25/2022 (C.C.No.1/2021) (CNR No.TNCH06-000466-2022)' shall hereinafter be referred to as 'said sessions case' for the sake of convenience and clarity.

2.Captioned matters are listed under the cause list caption 'FOR ADMISSION'.



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3.Short facts shorn of elaboration or in other words facts that are imperative and essential for appreciating this common judgment / order are that the said sessions case pertains to an alleged occurrence on 01.04.2018 at about 10.30pm; that the said occurrence is within the limits of Keelakarai Police Station in Ramanathapuram District; that the matter pertains to an alleged conspiracy for disrupting communal harmony and purchase of illegal fire arms for waging armed struggle to liberate the associates who are presently lodged in prisons; that there are 10 accused in said sessions case before said trial court; that the FIR which is the fulcrum of said sessions case is FIR No.153 on the file of National Investigation Agency (NIA), New Delhi, it is dated 10.01.2019 and bears reference FIR No.RC-01/2019/NIA/DLI [hereinafter 'said FIR' for the sake of convenience and brevity]; that the said FIR is for alleged offences under Sections 153A and 120 B of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Sections 15, 17, 18, 19 and 20 of 'Unlawful Activities (Prevention) Act, 1967' ['UAPA' for the sake of brevity] and Section 25(1)(a) of Arms Act, 1959; that with the exception of A2 and A8, remaining 8 accused have now been enlarged on bail; that A7 Thiru. Hameed Aspar filed a discharge petition in



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CrI.M.P.No.840/2023 seeking discharge under Section 227 of 'The Code of Criminal Procedure, 1973 [Cr.P.C., for the sake of brevity]; that discharge petition of A7 was filed on 20.06.2023; that the prosecution i.e., NIA has filed objections; that this CrI.M.P. is listed for hearing on Monday (31.07.2023) before said trial court; that A1 Thiru. Sheik Dawood had earlier filed a discharge petition (under Section 227 of Cr.P.C.,) vide CrI.M.P.No.770/2022 (filed on 19.12.2022) the same came to be dismissed by the said trial court on 21.03.2023; that this dismissal of discharge petition of A1 has attained finality as 90 days limitation cap had elapsed; that owing to the two provisos to Section 21 of 'National Investigation Agency Act, 2008' ['NIA Act' for the sake of brevity] there can be no appeal as regards the dismissal of discharge petition qua A1; that the discharge petition vide CrI.M.P.No.463/2022 filed by A10 Thiru. Rizwan Mohammed was dismissed by the 'said trial court on 21.03.2023' [hereinafter 'impugned order' for the sake of convenience and clarity]; that captioned main CrI.A is directed against the impugned order.



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4.The sheet anchor submission of the learned counsel for appellant (A10) before trial court is twofold. One is, said trial court has relied on extraneous material and the second is, trial court has only parroted the counter filed by NIA in the impugned order. We refrain ourselves from expressing any opinion on these submissions as we are now remitting the matter back to the said trial court.

5.Mr.R.Karthikeyan, learned Special Public Prosecutor (NIA) who was in court accepted notice for the respondent and he is instructed by Mr.V.Arun Magesh, Inspector of Police / Chief Investigation Officer.

6.In the course of considering the captioned matters for admission in the Admission Board and interim prayer vide captioned Crl.MP, it emerges that the appellant is raising *Shreya Singhal* principle i.e., ***SHREYA SINGHAL VS. UNION OF INDIA [2015 SCC ONLINE SC 248 : 2015 (5) SCC 1]*** as charge sheet qua Section 161 of Cr.P.C., statement of as many as 83 witnesses, material objects and more importantly, whatsapp messages have been considered.



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7. On a perusal of the case file, it came to light that this ***Shreya Singhal*** point has not been raised before said trial court. As the sitting of evidence albeit not as sitting in a trial is imperative for a 227 legal drill, it appears that the role of an 'intermediary' within the meaning of Section 2(1)(w) of Information Technology Act, 2000 and the principles laid down by the Hon'ble Supreme Court in ***Shreya Singhal's*** case becomes relevant. This means that it is necessary for the said trial court to go through the legal drill *de novo*. On this aspect of the matter, there was consensus qua both sides. Therefore, by consent of both sides, main Crl.A was taken up and the same is being disposed of. The following consent order is passed:

(i) Impugned order i.e., order dated 21.03.2023
in Crl.M.P.No.463/2022 in Spl.S.C.No.25/2022
(C.C.No.1/2021) (CNR No.TNCH06-000466-2022)
on the file of Special Court under the National
Investigation Agency Act, 2008 (Sessions Court for
Exclusive Trial For Bomb Blast Cases) Chennai at
Poonamallee, Chennai is set aside;



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(ii) It is made clear that the impugned order is set aside for the purpose of enabling the said trial court to consider the matter afresh in the light of ***Shreya Singhal*** principles argument and therefore, for the purpose of abundant clarity and specificity, we further make it clear that we have not expressed any view or opinion on the arguments advanced and resisted in the Admission Board;

(iii) It is axiomatic from the above directive that the trial court will consider the matter afresh untrammelled by this order except the directive to consider the discharge petition afresh *inter alia* in the light of ***Shreya Singhal*** principle and within time frame to be set out infra;



(iv) We also deem it appropriate to make it clear that the trial court shall apply all the other legal principles qua a Section 227 Cr.P.C., discharge petition legal drill while considering the matter afresh and that will now include Sajjan Kumar principle i.e., ***SAJJAN KUMAR VS. C.B.I. [2010 (9) SCC 368 : 2010 SCC ONLINE SC 1045 : 2010 (3) SCC (CRL) 1371]***.

(v) As already alluded to supra, the discharge petition taken out by A7 (Thiru. Hameed Aspar) i.e., CrI.M.P.No.840/2023 is pending (objections have been filed by NIA) and the matter is ready for hearing and it is listed for arguments on Monday (31.07.2023). Therefore, discharge petition of A7 i.e., CrI.M.P.No.840/2023 and that of A10 i.e., CrI.M.P.No.463/2022 shall be taken up together and disposed of bearing in mind the aforementioned



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objections / directives of this Court as expeditiously as the official business of the said trial court would permit but in any event on or before 31.08.2023;

(vi) Learned counsel on both sides submitted that they will extend all cooperation in the said trial court for meeting the aforementioned time line cap;

(vii) It is made clear that in both matters i.e., Crl.M.P.No.840/2023 filed by A7 (Thiru. Hameed Aspar) and Crl.M.P.No.463/2022 filed by A10 (Thiru Rizwan Mohammed) out of which captioned Crl.A. arises shall be argued before the learned Judge of the said sessions court on the basis of petition, objections and material which are already on record and both sides shall not introduce any additional pleadings or additional materials;



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(viii) As regards this Caveat, it is made clear that the same will not apply to questions of law and principles / propositions put in place / propounded by Hon'ble Courts.

8.Captioned Criminal Appeal is disposed of in the aforesaid manner. Consequently captioned Crl.M.P. is disposed of as closed.

(M.S., J.)

(R.S.V., J.)

25.07.2023

Index : Yes
Speaking
Neutral Citation : Yes
TK



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To

- 1.The Special Judge
Special Court under the
National Investigation Agency Act, 2008,
Sessions Court for Exclusive Trial
For Bomb Blast Cases,
Chennai at Poonamallee, Chennai.
- 2.The Inspector of Police
National Investigation Agency
Chennai.
- 3.The Public Prosecutor
High Court of Madras.



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