



Crl.A.No.871 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM

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

Crl.A.No.871 of 2022

Kannan @ Senthil @ Minnal @ Kumar

.. Appellant

Vs

State rep. By
The Deputy Superintendent of Police,
Q Branch CID, Coimbatore.

.. Respondent

Appeal filed under Section 21 of National Investigation Agency Act, 2008 to set aside the order dated 21.06.2022 made in Crl.M.P.No.549 of 2022 in C.C.No.3 of 2016 on the file of the Principal District and Sessions Judge, Erode and enlarge the appellant on bail.

For Appellant : Mr.R.Sankarasubbu
assisted by Ms.S.Sengkodi

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



Crl.A.No.871 of 2022

ORDER

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

This order will now dispose of the captioned Appeal.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 16.08.2023 which reads as follows:

'CRL.A.No.871 OF 2022

M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

[Order of this Court was made by **M.SUNDAR, J.**]

This 'Criminal Appeal' [hereinafter 'Crl.A' for the sake of brevity and convenience] has been filed in this Court on 20.07.2022 under Section 21 (to be noted, it is sub-section 4 of Section 21) of 'National Investigation Agency Act, 2008' {'NIA Act' for the sake of brevity}.

2.Factual matrix in a nutshell is that the appellant was arrested on 04.05.2015 by 'Q' Branch, Coimbatore, in connection with Crime No.1 of 2015 on the file of 'Q' Branch, Coimbatore; that the police filed final report on 03.10.2015 and the same was taken on file as S.C.No.256 of 2015 on the file of 'Principal Sessions Judge,



Crl.A.No.871 of 2022

Coimbatore' ('Principal Sessions Judge, Coimbatore' shall hereinafter be referred to as 'said trial court') ; that the alleged offence was qua 124-A of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]; that thereafter alteration report was filed adding provisions of 'Unlawful Activities (Prevention) Act, 1967' ['UAPA' for the sake of brevity]; that the alleged offences now are under Sections 419, 420, 468, 471 of IPC and 13(1)(b), 18, 18-A, 18- B, 20, 38(1), 39(1)(a)(i), 40(1)(b) of UAPA; that a perusal of case diary and charge sheet brings to light that the offences centre around the allegation that the appellant is a Member of 'Communist Party of India (Maoist)' [hereinafter 'CPI (Maoist)' for the sake of convenience and brevity ; that this CPI (Maoist) figures as Sl.No.34 in the First Schedule to UAPA; that the First Schedule of UAPA pertains to Section 2(1)(m) thereat which defines 'terrorist organisation'. Sections 35, 36 and 38(1) of UAPA talk about amendment of the Schedule, Denotification of a terrorist organisation and Offence relating to Membership of a terrorist organisation, which we are not directly concerned with in the case on hand; that this means that we are concerned with 2(1)(m) of UAPA and the First Schedule thereat; that the charge sheet talks largely about possession of reading material / papers propagation of ideologies and attempt to recover persons; that under such circumstances, the appellant moved a bail application vide Crl.M.P.No.549 of 2022 in C.C.No.3 of 2016 on the



Crl.A.No.871 of 2022

file of learned Principal District and Sessions Judge, Erode; that the learned Principal District and Sessions Judge, Erode, after giving an opportunity to the Prosecutor and after hearing both sides, dismissed the bail petition in and by an 'order dated 21.06.2022' (hereinafter 'impugned order' for the sake of convenience and brevity); that captioned Crl.A has been filed assailing the impugned order inter alia under Section 21(4) of NIA Act as already alluded to supra.

3.Mr.R.Sankarasubbu, learned counsel for appellant predicated his campaign against the impugned order inter alia on the following points:

(i)There is no allegation of any act of violence qua the appellant;

(ii)The Trial Court erred in referring to Section 13(1)(b) of UAPA offence with regard to proviso to Section 43D(5) of UAPA. To be noted, Section 13(1)(b) of UAPA is neither under Chapter IV nor under Chapter VI of UAPA;

(iii) The appellant remains incarcerated from 04.05.2015 for over eight years now;

(iv) The learned Principal District and Sessions Judge, Erode, vide paragraph 10 has referred to pendency of four other cases qua the appellant but in all four cases bail has been granted to the appellant by three different Hon'ble Single Judges of this Court and the details of the same are as follows:



Crl.A.No.871 of 2022

Sl.No.	Case No.	Order Date
1	Crl.R.C.Nos.1222 of 2015 and 19 of 2016	20.01.2016
2	Crl.R.C.Nos.1268 of 2015 and 16 of 2016	20.01.2016
3	Crl.O.P.No.913 of 2017	07.02.2017
4	Crl.O.P.Nos.10187 & 10191 of 2019	27.04.2019

(v) The appellant was in any event granted default bail i.e., bail under Section 167(2) of Cr.P.C., in the case on hand but could not come out of prison as he was not able to furnish sureties but when the appellant approached this Court, the appellant was relegated to the trial court saying that the appellant should apply for regular bail. Under such circumstances, regular bail under Section 439 of Cr.P.C., was sought wherein impugned order was made though the appellant was granted default bail under Section 167(2) of Cr.P.C.

4.Learned Prosecutor Mr.A.Gokulakrishnan has filed a counter affidavit and charge sheet has been placed before us. The case diary is also before us. To be noted, we are recording this in the light of proviso to Section 43D(5) of UAPA. Learned Prosecutor requested for a short accommodation to get further instructions (if any) (to be noted, objections have already been filed and the same is on record) and revert to this Court.



Crl.A.No.871 of 2022

5.Adjourned at the request of the learned Prosecutor.

List on Tuesday. List on 22.08.2023. '

3. The aforementioned proceedings made on 16.08.2023 listing shall be read as an integral part and parcel of this order. To be noted, learned counsel on both sides i.e., Mr.R.Sankarasubbu, learned counsel on record for appellant assisted by Ms.S.Sengkodi, learned counsel and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor for respondent/State submitted that the factual matrix and the points urged have been correctly captured in the 16.08.2023 proceedings. It is further to be noted that the short forms, short references and abbreviations used in the 16.08.2023 proceedings will continue to be used in the instant order also for the sake of convenience and clarity.

4. In the earlier proceedings, the points on which learned counsel for appellant predicated his campaign against the impugned order has been captured. Before proceeding to deal with the objections of the learned Prosecutor, the question as to whether the captioned appeal has to be heard by a division bench i.e., 'a Bench of two Judges of the High Court' within the meaning of Section 21(2) of NIA Act needs to be set out with clarity and specificity.



Crl.A.No.871 of 2022

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5. The answer to the aforementioned question is in the affirmative for two reasons and the two reasons are as follows:

5.1 Section 22 of NIA Act captioned 'Power of State Government to (designate Court of Session as Special Courts)' is a provision under which said trial court has been designated as a Special Court qua UAPA. To be noted, jurisdiction of Special Courts is set out under Section 13 of NIA act. This means that Trial Court which made the impugned order is a Special Court within the meaning of NIA Act and therefore schedule to the NIA Act i.e., schedule within the meaning of Section 2(1)(f) of NIA Act kicks in. This reason answers one part of the aforementioned question i.e., that the captioned appeal will be a statutory appeal under Section 21 of NIA Act.

5.2 The second point turns on another question as the captioned appeal is one against an order of dismissal of a bail petition and therefore it is an appeal under Section 21(2) and not under Section 21(1) of NIA Act. Sub-section (2) of Section 21 of NIA Act mandates that every appeal under sub-section (1) of Section 21 shall be heard by a Bench of two Judges of the High Court. Therefore, the question as



Crl.A.No.871 of 2022

to whether an appeal under sub-section (4) of Section 21 should also be heard by a Bench of two Judges of the High Court arises but this question is no longer *res integra* as the same has been settled by a Hon'ble Full Bench of this Court in **Jaffar Sathiq @ Babu vs. The State** reported in **2021 SCC Online Mad 2593** and the most relevant paragraph wherein reference was answered by the Hon'ble Full Bench in *Jaffar's case* reads as follows:

21. Be that as it may, the decision of the Supreme Court in Bikramjit Singh (supra) holds the field today. We must, therefore, yield to the wise counsel of St. Augustine who said "Roma locutaest, causa finitaest (When Rome has spoken, the case is closed). Consequently, the question(s) referred are answered thus:

"An order passed by a Court of Session dismissing a bail application in a case involving offence(s) under the Unlawful Activities (Prevention) Act, 1967, must be challenged only by way of an appeal under Section 21 of the National Investigation Agency Act, 2008. Consequently, such an appeal would lie only before a Division Bench vide Section 21(2) of the National Investigation Agency Act, 2008. The decision of the Division Bench of this Court in A. Raja



Mohammed (supra) and that of a learned single Judge in Abdulla (supra) to the contrary, will stand overruled."

The reference is, accordingly, answered on the aforesaid terms.

5.3 To be noted, Hon'ble Full Bench has slotted a Section 21 NIA Act statutory appeal against dismissal of bail plea also under sub-section (2) of Section 21 though technically it is under sub-section (4) of Section 21. Be that as it may, Hon'ble Full Bench has opined that a statutory appeal against dismissal of a bail plea, under Section 21 of NIA Act would be before a Division Bench (not before a Single Judge) and applying this obtaining principle we are hearing out the captioned appeal. However, we make it clear that the issue as to Hon'ble Full Bench slotting a Section 21(4) appeal also under Section 21(2) is left open for being considered and / or for further reference if the need arises in a case where there is disputation or contestation in this regard.

6. From the narrative supra, it is clear that an appeal in a case of this nature has to necessarily be heard by a Bench of two Judges of the High Court.



Crl.A.No.871 of 2022

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7. We now proceed to consider the objections of the learned Prosecutor. Learned Prosecutor adverted to the counter dated 18.10.2022 sworn to by the Deputy Superintendent of Police, Q Branch CID, Coimbatore Range (hereinafter 'Investigating Officer' i.e., 'I.O.' for the sake of convenience) submitted that L.W.1 is acquainted with L.W.2, wanted some revenue records (patta and/or other similar documents), L.W.2 offered to help L.W.1 owing to which Aadhar Card and other details of L.W.1 were given to L.W.2. These documents were used by the appellant to purchase SIM cards with which certain activities pertaining to CPI (Maoist) which is slotted as SI.No.34 in First Schedule to UAPA was furthered. Learned Prosecutor on instructions submits that ideologies were propagated and appellant attempted to make recruitment.

8. We carefully considered the submissions made on both sides.

9. Let us first deal with altered offences under Sections 18, 18-A, 18-B, 20, 38(1), 39(1)(a)(i), 40(1)(b) of UAPA. These provisions read as follows:

'18. Punishment for conspiracy etc., :- Whoever



Crl.A.No.871 of 2022

conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18-A. Punishment for organising of terrorist camps: - *Whoever organises or causes to be organised any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.*

18-B. Punishment for recruiting of any person or persons for terrorist act:- *Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.*

20.Punishment for being member of terrorist gang or organisation:- *Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.*



Crl.A.No.871 of 2022

38.Offence relating to membership of a terrorist organisation: (1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove -

(a)that the organisation was not declared as a terrorist organisation at the time when he came a member or began to profess to be a member; and

(b)that he has not taken part in the activities of the organisation at any time during its inclusion in the First Schedule as a terrorist organisation.

39.Offence relating to support given to a terrorist organisation:-(1)A person commits the offence relating to support given to a terrorist organisation, -

(a)who, with intention to further the activity of a terrorist organisation, -

(i)invites support for the terrorist organisation

40.Offence of raising fund for a terrorist organisation:- (1)A person commits the offence of raising fund for a terrorist organisation, who, with intention to further activity of a terrorist organisation, -

(a)....



Crl.A.No.871 of 2022

(b) receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purposes of terrorism.'

10. A careful perusal of the aforementioned seven provisions makes it clear that they are anchored on 'terrorist act'. 'Terrorist act' is a defined term which has been described in Section 15 of UAPA and the same reads as follows:

'15.Terrorist act:- (1) *Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic 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 any any foreign country, -*

(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 or, or injuries to, any person or persons;
or

(ii) loss of, or damage to, or destruction of,



property; or

(iii) *disruption or any supplies or services essential to the life of the community in India or in any foreign country; or*

(iiia) *damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; 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 an international or inter-governmental organisation 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*



Crl.A.No.871 of 2022

*Gazette by the Central Government as public
functionary;*

*(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.'*

11. Aforementioned Section 15 is a description but it assumes
the colour of definition owing to Section 2(1)(k) of UAPA, which reads
as follows:

*'2.Definitions:- (1) In this Act, unless the context
otherwise requires, -*

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)



Crl.A.No.871 of 2022

(j)

(k) "terrorist act" has the meaning assigned to it in Section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;'

12. To be noted, terrorist act description was by way of an amendment to UAPA which kicked in with effect from 01.02.2013. A careful perusal of aforementioned definitions makes it clear that there should be some act of violence but in the case on hand, we find that there is no act of violence which has been attributed to the appellant much less an overt act either in the FIR or in the Section 173 Cr.P.C. final report. It is further to be noted that we are informed that the appellant is a law graduate but learned Prosecutor submits on instructions that he discontinued his studies. But it may not be necessary to delve more into this detail. To put it succinctly, absent terrorist act i.e., terrorist within the meaning of Section 15 of UAPA, the aforementioned seven offences under Sections 18, 18-A, 18-B, 20, 38(1), 39(1)(a)(i), 40(1)(b) of UAPA cannot be cited as an impediment for grant of bail. If these seven provisions are taken out of the Section 173 Cr.P.C. final report, the rigour for grant of bail ingrained in proviso to Section 43-D(5) of UAPA will not apply, the reason is proviso to



Crl.A.No.871 of 2022

Section 43-D(5) applies only to offences under Chapters IV and VI of UAPA. This means that the question of grant of bail to the appellant is to be tested on *Antil's* case adumbration i.e., regular Section 439 Cr.P.C. legal drill conditions. When we say *Antil's* conditions, we are referring to the recent judgment of Hon'ble Supreme Court in **Satender Kumar Antil vs Central Bureau Of Investigation** reported in **2022 10 SCC 51 : 2022 SCC Online SC 825** rendered by a Hon'ble Division Bench of Justice Sanjay Kishan Kaul and Justice M.M. Sundresh. To be noted, in *Antil's case*, *Hussainara Khatoon* has been reiterated (**Hussainara Khatoon & Ors vs Home Secretary, State Of Bihar** reported in **(1980) 1 SCC 81**). In paragraph 51 of *Antil's case*, Hon'ble Supreme Court reiterated *Hussainara Khatoon* to say that to determine whether an accused has his roots in the community, the Court should take into account the following factors:

1. *The length of his residence in the community;*
2. *his employment status, history and his financial condition;*
3. *his family ties and relationships;*
4. *his reputation, character and monetary condition;*
5. *his prior criminal record including any record of prior release on recognizance or on bail;*
6. *the identity of responsible members of the community who would vouch for his reliability;*



Crl.A.No.871 of 2022

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7. the nature of the offence charged and the apparent probability of conviction and the likely sentence insofar as these factors are relevant to the risk of non-appearance; and

8. any other factors indicating the ties of the accused to the community or bearing on the risk of wilful failure to appear.

13. Be that as it may, before we proceed further, we notice one aspect of the order of the said Trial Court. Learned said Trial Court has proceeded on the basis that the offence under Section 13 (1) of UAPA also attracts the rigour of proviso to Section 43-D(5) of UAPA. This is plainly incorrect. The reason is Section 13 (1) of UAPA finds its slot under Chapter III of UAPA captioned 'Offences and Penalties' and the rigour of Section 43-D(5) proviso of UAPA qua grant of bail would apply to only Chapters IV and VI as already alluded to supra. To this extent, the impugned order is clearly erroneous and deserves to be interfered with by this Court in exercise of its appellate powers under Section 21 of NIA Act. Another aspect of the impugned order of the Trial Court which virtually takes away the substratum of the Trial Court order is paragraph 10 threat wherein the learned Trial Judge has put against the appellant pending cases by noticing that there are as many as four similar cases against the appellant. Paragraph 10 of the Trial Court order reads as follows:

Page Nos.18/29



Crl.A.No.871 of 2022

'10. Incidentally, this court would like to point out the prosecution has pointed out that there are as many as four other cases of similar nature as against the petitioner in Cr.No.1/2015 on the file of Q branch CID, Coimbatore, in Cr.No.529/2015 on the file of Chennaimalai PS, Erode District, in Cr.No.1/2017 on the file of Q Branch CID, Dharmapuri and in Cr.No.145/2014 on the file of Azhiya PS, Coimbatore District.'

14. As regards the aforementioned four cases, there is no disputation or disagreement that in all four cases, this Hon'ble Court has granted bail and the details have been captured in the form of tabulation in sub-paragraph (4) of paragraph 3 in the earlier proceedings dated 16.08.2023. We deem it appropriate to improve the tabulation and set out the same as follows:

Sl. No.	Case No.	Order Date	Trial Court Case
1	Crl.R.C.Nos.1222 of 2015 and 19 of 2016	20.01.2016	S.C.No.281 of 2015 on the file of Principal District Judge, Coimbatore.
2	Crl.R.C.Nos.1268 of 2015 and 16 of 2016	20.01.2016	S.C.No.256 of 2015 on the file of Principal District Judge, Coimbatore.



Crl.A.No.871 of 2022

Sl. No.	Case No.	Order Date	Trial Court Case
3	<i>Crl.O.P.No.913 of 2017</i>	<i>07.02.2017</i>	<i>S.C.No.103 of 2016 on the file of Principal District Judge,Erode.</i>
4	<i>Crl.O.P.Nos.10187 & 10191 of 2019</i>	<i>27.04.2019</i>	<i>S.C.No.71 of 2017 on the file of Principal District Judge, Dharmapuri.</i>

Therefore, the substratum of the order of the Trial Court goes i.e., owing to the reason that the orders of three Hon'ble Single Judges of this Court enlarging the petitioner on bail in all the four cases which have been put against the appellant for refusal of grant of bail.

15. Reverting to Section 43-D(5) proviso of UAPA, we have already come to the conclusion that absent offences under Chapters IV and VI, the same does not come into play and that is for the simple reason that all these offences are anchored on terrorist act which has been described under Section 15 of UAPA. In this regard, learned counsel for appellant Mr.R.Sankarasubbu drew our attention to what according to him is a similar provision in erstwhile 'Prevention of Terrorism Act, 2002' (hereinafter 'POTA' for the sake of convenience



Crl.A.No.871 of 2022

and clarity). We are concerned with Section 49 of erstwhile POTA. The expression used in erstwhile POTA is '*court is satisfied that there are grounds for believing that he is not guilty of committing such offence*' however as regards the expression in UAPA talks about opinion to be arrived at by perusal of case diary and Section 173 Cr.P.C. final report which we have done. To be noted, we have already elaborated in the earlier proceedings that the case diary and Section 173 Cr.P.C. final report have been made available to us and we had the benefit of perusing the same. We reiterate that no terrorist act much less terrorist act within the meaning of Section 15 (to be noted, Section 2(1)(k) read with Section 15) of UAPA has been attributed to the appellant even according to the prosecution i.e., to be noted, even according to the investigation as well as prosecution.

16. Be that as it may, as regards POTA provision, the constitutional validity of the same was challenged in **People's Union for Civil Liberties and Another Vs. Union of India** reported in **(2004) 9 SCC 580 : 2003 SCC Online SC 1407**. In *PUCL's case*, Hon'ble Supreme Court after a detailed analysis qua grant of bail provision in erstwhile POTA ingrained in Section 49 thereat made it clear that it would have a life of one year qua date of arrest. After one



Crl.A.No.871 of 2022

year from the date of arrest, regular bail absent statutory constriction would apply. However, there is no such jurisprudence as regards UAPA as of today. We deem it appropriate to say that we have tested Chapters IV and VI phenomena based on Section 15 which describes terrorist act and therefore that will suffice to say that the matter is taken out of the rigour of proviso to Section 43-D(5) of UAPA.

17. Reverting to the *Antil's* conditions namely *Hussainara Khatoon* conditions, we notice that four cases even according to the prosecution are similar cases and orders three Hon'ble Single Judges of this Court have been put in place conditions. Therefore, it would only be appropriate that it will suffice if similar conditions are put in place in the case on hand also.

18. To sum up and set out by way of adumbration, five points urged have weighed with us as determinants/parameters qua grant of bail and those five points are:

(i) Even according to prosecution theory, there is no act of violence qua appellant much less a terrorist act within the meaning of Section 15 of UAPA;

(ii) Section 43-D(5) proviso rigour will not apply as there are reasonable grounds for believing that accusations qua offences under Chapters IV and VI of UAPA are not



Crl.A.No.871 of 2022

true and that this emerges from perusal of case diary and report under Section 173 Cr.P.C.;

(iii) The appellant remains incarcerated for over eight years now i.e., from 04.05.2015;

(iv) In four other similar cases against the appellant bail has been granted by this Court on different dates between 2016 and 2019; and

(v) Appellant has been granted default bail under Section 167(2) of Cr.P.C. in this very case i.e., the case on hand but the appellant could not come out of the prison as he could not furnish sureties by which time there was alteration of the FIR and therefore when the appellant came to this Court, the appellant was relegated to the Trial Court for moving regular bail under Section 439 Cr.P.C. which has culminated in the impugned order.

19. In addition to the aforementioned five points, we have seen the seizure mahazar. To be noted, this seizure mahazar is in Crime No.1 of 2015 (now S.C.No.256 of 2015 on the file of Principal District Judge, Coimbatore). This seizure qua A1 in that case is being relied on in the case on hand and {no separate seizure in the case on hand}



Crl.A.No.871 of 2022

and therefore we are looking into it. Even according to the learned Prosecutor, there has been no seizure whatsoever in the instant case viz., S.C.No.103 of 2016 on the file of Principal District Judge, Erode and only the seizure qua A1 in S.C.No.256 of 2015 is being relied on. Even according to that seizure mahazar, the following have been seized from the appellant:

Sl. Nos.1 to 13 are reading materials and lectures;

Sl. Nos.14 and 15 are the two SIM Cards about which there is allusion supra;

Sl. No.16 is 6500 INR.

20. Therefore, we find that even according to the seizure mahazar of prosecution, no weapon which can cause an act of violence much less a terrorist act within the meaning of Section 15 has been seized. This has also weighed in our mind for grant of bail. As regards interference with the order of the Trial Court, we have already articulated the reason.

21. In this regard, this Court makes it clear that it draws inspiration from **Vernon** being **Vernon Vs. State of Maharashtra and another** reported in **2023 SCC OnLine SC 885**, which was recently rendered by Hon'ble Supreme Court on 28.07.2023. In



Crl.A.No.871 of 2022

Vernon, on facts, it was alleged by prosecution that a programme was held and various events held in connection with the programme were provocative in nature and had the effect of creating enmity between caste groups leading to violence and loss of life. In **Vernon**, Hon'ble Supreme Court made it clear that mere possession of literature even if it inspires or propagates violence by itself would neither amount to terrorist act within the meaning of UAPA (in general) nor any other offence under Chapters IV and VI of UAPA (in particular).

22. As we have perused the case diary as well as Section 173 Cr.P.C. final report and made some observations, we make it clear that this part of the legal drill on hand became imperative owing to the language in which proviso to Section 43-D(5) of UAPA is couched. Therefore, we deem it appropriate to extract and reproduce paragraphs 39 and 42 of **Thwaha Fasal vs Union Of India** reported in **(2021) 8 SCR 797** wherein the Hon'ble Supreme Court while dealing with a legal drill akin to the one on hand had dealt with this very aspect of the matter. Paragraphs 39 and 42 of *Thwaha Fasal's* case read as follows:

39. It is true that without recording a satisfaction as contemplated by sub-section (5) of Section 43D, the order



Crl.A.No.871 of 2022

granting bail to the accused no.1 could not have been confirmed by the High Court. However, we have examined the material against both the accused in the context of sub-section (5) of Section 43D. Taking the materials forming part of the charge sheet as it is, the accusation against both the accused of the commission of offences punishable under Sections 38 and 39 does not appear to be prima facie true.

42. We clarify that the observations and findings recorded in this Judgment are only for the limited purposes of considering the applications for bail made by the accused nos. 1 and 2. The Special Court shall not be influenced by the said observations and findings while applying its mind to the question of framing charge as the considerations for framing charge are different. The Special Court will not be influenced by the observations made in this Judgment during the trial of the case.

23. Therefore, *Thwaha Fasal* principle as captured in paragraphs 39 and 42 thereat will operate in the case on hand also when the learned Trial Court proceeds with the trial.

24. In the light of the narrative, discussion and dispositive



Crl.A.No.871 of 2022

reasoning thus far, the following order is made:

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24.1 The impugned order passed by the Trial Court being order dated 21.06.2022 in Crl.M.P.No.549 of 2022 is set aside and bail is granted to the appellant subject to conditions that are adumbrated infra in the sub-paragraphs to follow;

24.2 Appellant shall execute a bond and furnish two sureties for a likesum of Rs.10,000/- each and one of those sureties should be a blood relative. Furnishing of sureties is to the satisfaction of learned Trial Court i.e., Principal Sessions Judge, Erode;

24.3 The appellant shall appear and sign before the Trial Court i.e., Principal District Court, Coimbatore/Special Court designated under Section 22 of NIA Act every day at 10.30a.m. until further orders;

24.4 The appellant shall not cause delay in trial and the appellant shall ensure smooth and speedy trial;

24.5 The appellant shall not tamper with evidence and/or indulge in any other activity/activities which are in the nature of derailing the trial in any manner;

24.6 The appellant shall inform the Trial Court the address where he resides and if he changes his address it should be informed to the Trial Court;

24.7 Trial Court will be at liberty to cancel the bail if



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Crl.A.No.871 of 2022

any of the above conditions are violated or case of cancellation of bail is otherwise made out.

25. Captioned criminal appeal is allowed with the aforementioned directives in the aforesaid manner.

(M.S.,J.) (R.S.V.,J.)
22.08.2023

Index : Yes
Neutral Citation : Yes
mmi

To

- 1.The Deputy Superintendent of Police,
Q Branch CID, Coimbatore.
- 2.The Principal District and Sessions Judge,
Erode.
- 3.The Principal District and Sessions Judge,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



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Crl.A.No.871 of 2022

**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

mmi

Crl.A.No.871 of 2022

22.08.2023

Page Nos.29/29