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CrI.A. No.964 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CrI.A.No.964 of 2022

Chandra

.. Appellant

Vs

State rep. By

Deputy Superintendent of Police,
Q Branch CID, Dharmapuri,
Dharmapuri District.

.. Respondent

Appeal filed under Section 34 of Prevention of Terrorism Act against the order in CrI.M.P.No.235 of 2022 in Spl.C.C.No.5 of 2003 dated 18.07.2022 on the file of Special Court under Prevention of Terrorism Act, 2002, Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee and enlarge the appellant on bail.

For Appellant : Mr.R.Sankarasubbu

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
assisted by Mr.N.Nakkeeran



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CrI.A. No.964 of 2022

JUDGMENT

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

This order will now dispose of the captioned Criminal Appeal.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 16.03.2023, which reads as follows:

'Captioned Criminal Appeal has been filed in this Court on 16.08.2022 under Section 34 of 'The Prevention of Terrorism Act, 2002 (15 of 2002)' which shall hereinafter be referred to as 'POTA' for the sake of convenience and clarity.

2. Before plunging into the matter, we wanted to know about repeal of POTA.

3. Learned counsel for appellant Mr.R.Sankarasubbu, assisted by Mr.S.Mathivanan, Mr.Jeevanantham and Mr.R.Muniyapparaj (assisted by Mr.M.Sylvester John) learned Additional Public Prosecutor, who are before us, submit that POTA came into effect on 28.03.2002, thereafter POTA was repealed by an Ordinance being 'The Prevention of Terrorism (Repeal) Ordinance, 2004 (Ord.1 of 2004)', which shall hereinafter be referred to as 'POTA Repeal Ordinance' for the sake of convenience. Both sides



CrI.A. No.964 of 2022

requested for time to examine the date of this Ordinance and come before us.

4. Be that as it may, we are informed that this Ordinance was took shape as 'The Prevention of Terrorism (Repeal) Act, 2004 (26 of 2004) dated 21.12.2004', which shall hereinafter be referred to as 'POTA Repeal Act' for the sake of convenience. POTA Repeal Act came into force on 21.12.2004 is the common say but both sides requested for time to clarify whether it came into force on 21.12.2004 or 22.12.2004 as assent of the President was given on 21.12.2004 and it was published in the Government Gazette on 22.12.2004. Section 3 of POTA Repeal Act captioned 'Repeal and saving' says that all actions taken under POTA Repeal Ordinance are deemed to have been taken under POTA Repeal Act but the question is what is the legal fate of acts taken/done under POTA. Both sides requested for time to examine this position and revert to this Court.

5.Be that as it may, we deem it appropriate to record the submissions made before this Court. Captioned statutory appeal has been preferred against an order dated 18.07.2022 made in CrI.M.P.No.235 of 2022 in SPL.CC No.5/2003 (CNR No.TNCH 06 000237-2022) on the file of Special Court under the Prevention of Terrorism Act (POTA) 2002 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai at Poonamallee. This order shall hereinafter be referred to as 'impugned order' and this Special Court which made the impugned order shall



WEB COPY



CrI.A. No.964 of 2022

hereinafter be referred to as 'trial Court', both for the sake of convenience and clarity.

6. In and by the impugned order, the trial Court dismissed a bail petition under Section 439 Cr.P.C being a bail petition moved by the appellant whom we are informed is now A29 before the trial Court. We are informed that four crime numbers being Crime Nos.1004 of 2002, 1005 of 2002, 1006 of 2002 on the file of Uthangarai Police Station and Crime No.434 of 2002 on the file of Kallavi Police Station were transferred to 'Q' Branch CID Coimbatore and they culminated in aforementioned Spl.C.C.No.5 of 2003 on the file of the trial Court.

7. Originally there were 33 accused in all, 4 are no more and except the appellant remaining 28 accused have been enlarged on bail and this includes the appellant's spouse Sundaramuthy (son of Vedisamiyar) {A26 now in the trial Court} is the common say of both sides.

8. It is submitted that there was an alleged occurrence on 25.11.2002 in Kuragapatti village in erstwhile Dharmapuri District (now Krishnagiri District) thereafter, post final proclamation, the appellant was arrested on 21.07.2016, produced before trial Court under 'Prisoner Transfer Warrant' ['PT Warrant'] dated 16.08.2016 and remanded to custody. Appellant remains incarcerated since then.

9. Learned counsel for appellant, adverting to three other cases against the appellant (which have been put against the appellant as one of the points qua dispositive



WEB COPY



CrI.A. No.964 of 2022

reasoning by the trial Court) submits that in all three cases bail has been granted by various Courts. The three cases put against the appellant in tabulation as can be culled out from the counter are as follows:

Sl. No	District	Crime No. & Sec.	Stage of the case
1	Karur	Karur 'Q' Branch CID Cr.No.1/2016, u/s.18-A, 18-B, 20 & 38 of Unlawful Activities (Prevention) Act 1967 r/w.120(B) IPC @ Section 18, 18-A, 18-B, 20, 38, 39 of Unlawful Activities (Prevention) Act, 1967 r/w. 34 IPC and 419, 420, 465, 468 and 471 IPC (District Sessions Court, Karur)	Pending for trial(S.C.No.8 /2017)
2	Salem	Theevattippatti PS Cr.No.14/2020 U/s.188, 120(B), 121, 121A, 124A of IPC and Sections 10, 13, 15, 18 of UAP Act, 1967	Under Investigation
3	Dharmapuri	Krishnapurm PS Cr.No.122/2014 u/s. 120(B) 153(A) and 153(AA) and Sec. 25(1)(a) & 27 of Arms Act, 1959 & Sec.4,5 of Explosive Substances Act, 1908	Pending for trial (PRC No.11/2021)

10. Learned counsel for appellant has placed before us an order dated 21.01.2020 made in CrI.M.P.No.17630



of 2019 by Hon'ble Single Judge (Hon'ble Mr.Justice G.R.Swaminathan) of this Court in the Madurai Bench as regards S.No.1, order dated 24.07.2020 made in C.M.P.No.626 of 2020 by the learned Judicial Magistrate, Omalur with regard to S.No.2 (this is default bail) and order dated 04.11.2022 in CrI.M.P.No.2093 of 2022 made by the Principal District Judge, Dharmapuri as regards S.No.3. It is further submitted that alleged occurrence and crime numbers are dated 21.07.2016, 24.01.2020 and 28.06.2014 in S.Nos.1, 2 and 3 respectfully.

11. As regards the prosecution version, on 25.11.2022, i.e., the version that one Balan was overpowered and remaining 6 (including the appellant) made good their escape, learned counsel submitted that atleast two out of the six were arrested much later and they were also granted bail. Out of the six, Sundaramurthy (A26 and spouse of appellant) was arrested on 10.07.2007 and he was granted bail by this Court on 19.04.2012 made by a Hon'ble Division Bench in CrI.A.No.60 of 2012. As regards another person mentioned as Bharathi in the counter, it is submitted that she is Ragini @ Bharathi, she was arrested on 23.06.2013 and she was granted bail by this Court in CrI.A.No.377 of 2014 in and by an order dated 23.09.2014 made by another Hon'ble Division Bench of this Court. Therefore, the absconding theory (for negating bail plea) is a non-starter is learned counsel's say.

12. Thereafter, as regards roots of the appellant, learned counsel submitted that appellant's spouse



Sundaramurthy (A26) who has been enlarged on bail is residing in Ramiyampatti Village in Dharmapuri District, he owns a small dwelling hut there and that he is appearing before the trial Court regularly is learned Appellant counsel's say.

13. Besides this, learned counsel submitted that appellant is entitled to bail on health ground also as according to learned counsel for appellant, she underwent a hernia surgery in Gandhi Irwin Hospital, Tiruchirappalli and she is ailing. It is submitted by learned counsel for appellant that the appellant has not been produced before the trial Court owing to her ailment, illness and indisposition.

*14. Learned counsel for appellant pressed into service **Shaheen Welfare Association** case [**Shaheen Welfare Association Vs. Union of India and Ors.** reported in **1996 SCC (2) 616**] and submitted that four categories of under trial prisoner under POTA have been carved out, namely a) hardcore terrorists, b) those with direct overtact who have been incarcerated for five years and trial not likely to be completed in next six months, c) those with overtacts traceable to Sections 147, 148 and 149 of IPC and who have been incarcerated for three years and d) those who are alleged to have committed very minor acts such as mere possession and who have been incarcerated for 2 years and the dicta is, those who come under categories (b), (c) and (d) are entitled to bail as it is an infraction of sanctus constitutional right ingrained in Article 21 which includes the right to a speedy trial.*



CrI.A. No.964 of 2022

*Learned counsel also submitted that this Hon'ble Court in aforementioned Ragini @ Bharathi case while granting bail in CrI.A.No.377 of 2014 vide order dated 23.09.2014 (to which there is a allusion supra) has drawn inspiration and applied **Shaheen Welfare Association** case principle.*

15. Learned Prosecutor requested for some time to ascertain the position regarding the medical ground and revert to this Court.

16. For continuation, List on Monday. List on 20.03.2023.'

3. The aforementioned proceedings shall be read as an integral part and parcel of this order. Therefore the short forms and abbreviations used in the previous proceedings shall continue to be used in the instant order also for the sake of convenience and clarity.

4. As regards paragraph 3 of the above proceedings, we are informed that the POTA came into force on and from 28.03.2022; that Sl. Nos.24 and 25 of the Schedule to POTA are deemed to have kicked in on and from 05.12.2001; that the POTA was repealed on 21.12.2004 vide The Prevention of Terrorism (Repeal) Act, 2004 (Act 26 of 2004). Suffice to say that there is a saving clause. It may not be necessary to dilate further on this



CrI.A. No.964 of 2022

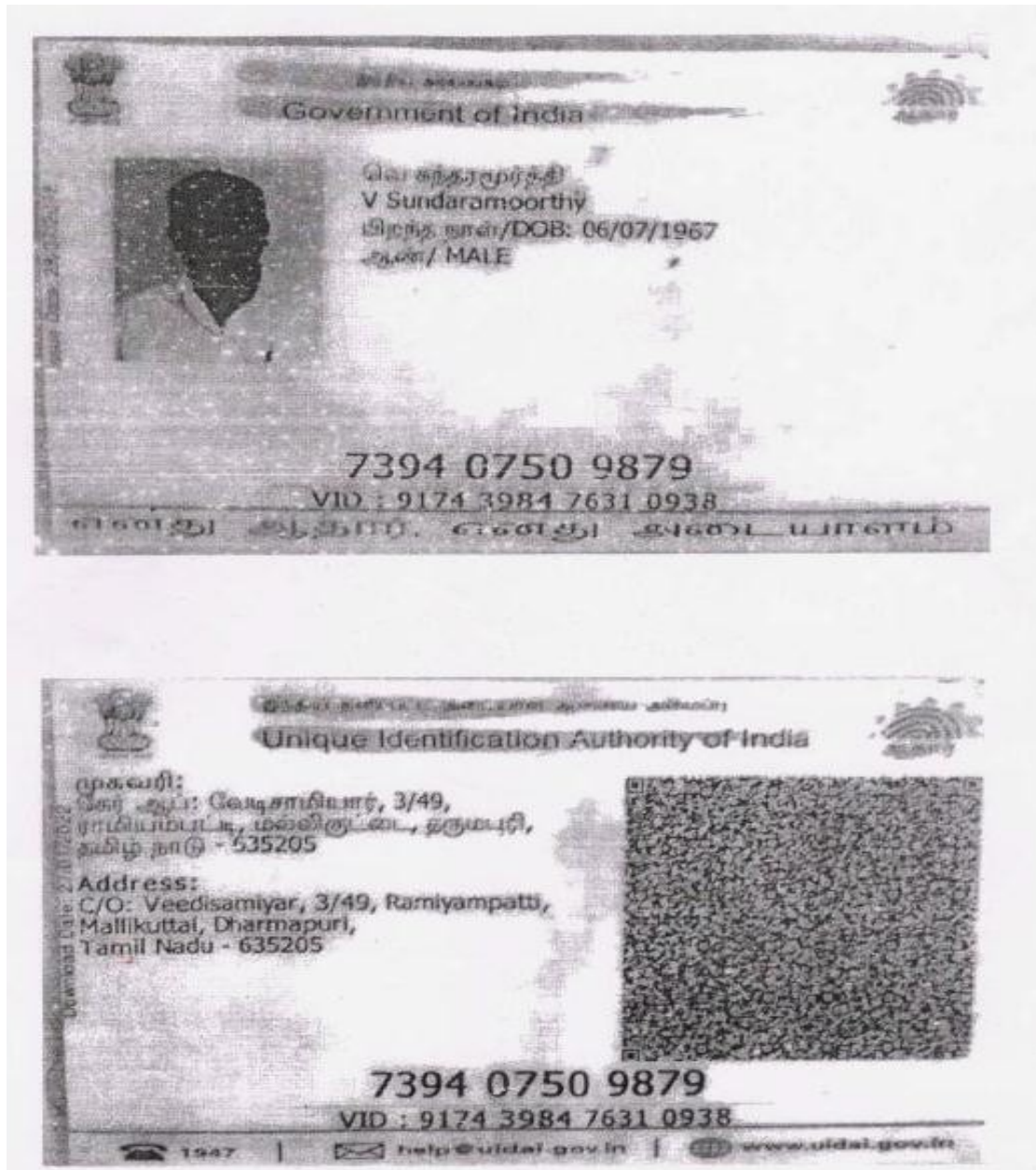
aspect of the matter as we are concerned with an appeal which is directed against an order of dismissal of a simple bail application under Section 439 of 'Criminal Procedure Code, 1973' ('Cr.P.C' for the sake of brevity) by the trial Court.

5. As would be evident from the previous proceedings and the counter affidavit, primary objection of the prosecution is predicated on the point that the appellant was absconding. In this regard, we find that it is evident from the previous proceedings that two other accused who were said to be absconding and were secured later, have since been granted bail in appeal proceedings by this Court. As regards the impugned order of the trial Court, this answers the absconding danger which has been set out as one of the grounds for denying bail. In any event, we would be putting in a condition for daily appearance until further orders which would be set out in the operative portion infra. As regards the change of circumstances and earlier bail petition, besides the medical ground that has been urged (to be noted it is supported by a report signed on 20.03.2023 from the Medical Officer of the Special Prison for Women, Trichy) we find that even before the impugned order of the trial Court, the Honourable Predecessor Bench has in and by an order dated 03.02.2022, has granted bail to Padma @ Sathyamary, who is now A30 in the trial Court. As regards root in the society,



Crl.A. No.964 of 2022

learned counsel for appellant has placed before us a photocopy of the Aadhar card of the appellant's spouse Sundaramoorthy (A26) in the trial Court and a scanned reproduction of the same is as follows:



6. Learned counsel for appellant has also placed before us the family card of mother of Sundaramoorthy (appellant's spouse)



Cr.L.A. No.964 of 2022

and a scanned reproduction of the same is as follows:

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7. Be that as it may we find that the appellant is the only person who is in custody as under trial prisoner and all the



CrI.A. No.964 of 2022

remaining accused have been enlarged on bail. As regards the answer to point No.7 by the trial Court, we find that POTA has since been repealed and therefore the same pales into insignificance.

8. One other apprehension raised by the prosecution is that there is possibility of the trial being delayed. Learned counsel for the appellant Mr.R.Sankarasubbu who is before us very fairly submits that he has volunteered to appear for the appellant in the trial Court and his memo of appearance has also been filed. This in our opinion puts to rest this apprehension insofar as this appellant is concerned.

9. In the light of the discussion and dispositive reasoning thus far, we deem it appropriate to grant bail and say that the appellant shall be enlarged on bail subject to the following conditions:

(i) The appellant shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of Special Court under the Prevention of Terrorism Act (POTA) (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee, Chennai (trial Court);



CrI.A. No.964 of 2022

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(ii) As regards the two sureties, one should be relative and the other can be a friend;

(iii) The appellant shall furnish her permanent address and shall inform the trial Court and the respondent about any change in her address;

(iv) The appellant shall appear before the aforementioned Court i.e., Special Court under the Prevention of Terrorism Act (POTA) (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee, Chennai (trial Court) on all working days at 10.30 a.m. until further orders of this Court.

10. We make it clear that though bail has been granted by this Court, it will well be open to the trial Court to take recourse to *P.K.Shaji* principle being ratio in **P.K.Shaji vs. State of Kerala** reported in **(2005) 13 SCC 283** regarding cancellation of bail in the event of the appellant absconding. In this regard, though obvious, we make it clear that it is open to the prosecution to take recourse to Section 229A of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity].

11. Captioned Criminal Appeal is allowed and bail is granted on the above terms.



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CrI.A. No.964 of 2022

(M.S.,J.) (M.N.K.,J.)
29.03.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Deputy Superintendent of Police,
Q Branch CID, Dharmapuri,
Dharmapuri District.
- 2.The Special Court under the Prevention
of Terrorism Act (POTA), 2002
(Sessions Court for Exclusive Trial of
Bomb Blast Cases),
Chennai at Poonamallee.
- 3.The Superintendent,
Special Prison for Women,
Tiruchirappalli.
- 4.The Public Prosecutor,
High Court, Madras.



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CrI.A. No.964 of 2022

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

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CrI.A. No.964 of 2022

29.03.2023