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Crl.A.No.167 of 2024 & batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.Nos.167, 12, 54, 74 of 2024, 1279, 1320 & 1449 of 2023

Crl.A.No.167 of 2024

Stanly Kennedy Fernando @ Ezhilon
@ Bumma @ Kisan

... Appellant

Vs.

Union of India Rep. by
Inspector of Police,
National Investigation Agency,
Kochi,
(R.C.No.29/2022/NIA/DLI)

... Respondent

Prayer :- The Criminal Appeal filed under Section 21(4) of National Investigation Agency Act, 2008, to set aside the order passed in Crl.M.P.No.1784 of 2023 dated 13.10.2023 on the file of the Hon'ble Special Court for Exclusive Trial for Bomb Blast Cases Chennai at Poonamallee, Chennai and grant bail to the appellant in Spl.S.C.No.3 of 2023 in R.C.No.29/2022/NIA/DLI pending on the file of the respondent.

For Appellant	:	Mr.K.Subash Chandran
For Respondent	:	Mr.R.Karthikeyan, Special Public Prosecutor for NIA



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J U D G M E N T

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(Order of the Court was delivered by S.M.Subramaniam J.)

Under assail in the present appeals is the orders dated 13.10.2023, 05.10.2023, 16.10.2023 & 02.11.2023, passed in Crl.M.P.Nos.1784 of 2023, 1785 of 2023, 1786 of 2023, 1783 of 2023, 1787 of 2023, 1844 of 2023 & 1973 of 2023, respectively, in Spl.S.C.No.3 of 2023, on the file of the Special Court under the NIA Act, 2008.

2.The appellants are the accused Nos.5, 7, 9, 6, 10, 13 & 2 respectively and filed petitions under Section 439 of Cr.P.C. to grant bail.

3.The respondent National Investigation Agency (NIA) registered the case against the appellants/A5, 7, 9 & 6 for the alleged offence under Section 120 B IPC Sections 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 and Section 8 (c) r/w Section 21 (c), 23 (c), 24, 27A, 28 and 29 of NDPS Act, 1985, against the appellant/A10, under Sections 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 and Section 8 (c) r/w Section 21 (c), 23 (c), 24, 27A, 28 and 29 of NDPS Act, 1985 r/w 120 B IPC, against the appellant/A13 for the alleged offence under Section 120 B IPC Sections 18, 20, 38, 39 and 40 of the Unlawful Activities



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(Prevention) Act, 1967 and Section 8 (c) r/w Section 21 (c), 23 (c), 24, 27A, 28 and 29 of NDPS Act, 1985, against the appellant/A2, under Section 120 B IPC Sections 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 and Section 8 (c) r/w Section 21 (c), 23 (c), 24, 27A, 28 and 29 of NDPS Act, 1985. The appellants/A5, 7, 9 & 6 were arrested on 19.12.2022 and remanded to judicial custody on 20.12.2022. A10 was arrested and remanded to judicial custody on 19.12.2022, A13 was arrested on 06.04.2023, A2 was arrested and remanded to judicial custody on 20.12.2022.

4.The appellants would mainly contend that the narration of facts in the charge sheet are presumptive in nature. In order to bring the appellants under the provisions of the Unlawful Activities (Prevention) Act, the authorities, in the absence of any materials available on record, issued charge sheet and therefore, the case of the appellants for grant of bail ought to have been considered by the Trial Court.

5.No doubt, initially a case under the Passport Act was registered against the appellants since they have arrived within the territory of India



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without any valid passport. They are lodged in Special Camp at Tiruchirapalli and considered as Refugees. Even if bail is granted, they cannot move around and to be shifted from prison to Special Camp. Therefore, the Trial Court failed to consider all these aspects while considering the bail petitions filed under Section 439 Cr.P.C.

6.The Special Public Prosecutor would oppose by stating that the charges against the appellants are serious in nature involving National Security. The appellants admittedly are Srilankan Citizens. An attempt had been made for the revival of banned terrorist organisation LTTE in Srilanka and in this connection, Laptops, Sim Cards and the communication details are secured by the respondent. Beyond that, to mobilise fund, to commit terrorist acts, the appellants along with the other accused persons accelerated the sale and transit of huge quantity of narcotic drugs and psychotropic substances and therefore, they have committed the alleged offence under the NDPS Act.

7.We have considered the arguments as advanced between the parties to the appeals on hand. We have perused the findings of the Special Court. The Special Court elaborately considered the grounds raised by the



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petitioners therein in the bail petitions and the objections raised by the respondent. The Trial Court considered the gravity of the offence and the scheduled offences under the NIA Act, 2008. The Central Government has directed the NIA, Kochi Branch office, to take up the investigation. Based on the orders of the Ministry of Home Affairs, Government of India, vide order dated 05.07.2022, a case in Crime No.RC-29/2022/NIA/DLI has been registered on 08.07.2022 at NIA Police Station, Delhi.

8.Pertinently, investigation/searches conducted and digital devices and documents were seized. Seized documents were forwarded to CDAC, Thiruvananthapuram and RFSL Chennai for analysis and the investigation copy/mirror images of the digital devices had been obtained and scrutinized. The relevant documentary evidences including Bank account statements, KYC, call data records, were obtained during the course of investigation.

9.Admittedly, charge sheet has been filed implicating the appellants herein.

10.The Trial Court after elaborately considering the grounds raised by



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the appellants and the objections raised by the respondent, considering the scope of Section 43 (D) (5) of the Unlawful Activities (Prevention) Act 1967, the Special Court found that there is no special reason to consider the bail petitions filed by the appellants.

11.Sub Section 7 to Section 43 (D) stipulates that notwithstanding anything contained in sub sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian Citizen and has entered the country unauthorizedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

12.The appellants were already involved in criminal cases under the Passport Act. Their entry into Indian territory was illegal and they were kept in the Special Camp at Tiruchirapalli. When the appellants are lodged in the Special Camp at Tiruchirapalli, they have committed the offences for which the present criminal case has been registered. By sitting in the Special Camp at Tiruchirapalli, they have organised for the purpose of revival of the banned organisation LTTE is the allegation mainly set out by the respondent. To realise their ambition, the activities done by the persons inside the Special



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Camp were investigated and electronic devices and documents etc are seized.

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13. When there is an express bar for grant of bail to the person accused of an offence punishable under the Unlawful Activities (Prevention) Act, 1967, the case of the appellants cannot be considered in a routine manner.

14. With reference to the exception stipulated in Sub Section 7 to Section 43 (D), we could not able to trace out any “very exceptional circumstances for the purpose of grant of bail”. In the absence of very exceptional circumstances, bail cannot be granted to the accused facing a charge under the Unlawful Activities (Prevention) Act, 1967. The language employed in the enactment is “very exceptional circumstances” and the emphasis made by the Parliament in the Act is to be considered with reference to the purpose and object to maintain National Security. Since we could not able to establish the very exceptional circumstances, the reasons assigned by the Special Court in the order impugned would be sufficient to form an opinion that the appellants have not made out a case to disagree with the order passed by the Special Court, which is impugned. Thus, the impugned order stands confirmed, however, we request the Special Court to expedite the trial as early as possible.



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15. In the result, all the Appeals stand dismissed. Consequently, connected miscellaneous petitions, if any, are also closed.

(S.M.S.J.,)

(V.S.G.,J.)

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Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1. The Special Court for Exclusive Trial for Bomb Blast Cases Chennai, Poonamallee, Chennai.



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2. Union of India Rep. by
Inspector of Police,
National Investigation Agency,
Kochi,
(R.C.No.29/2022/NIA/DLI)

3. The Public Prosecutor,
High Court of Madras.



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