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Crl.A.No.162 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.04.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.162 of 2024
and Crl.M.P.No.2004 of 2024

Jahir Hussain

...Appellant/A9

Vs.

The State represented by
Its Deputy Superintendent of Police,
SID CBCID,
Madurai.
(Cr.No.237 of 2011 on the file of the
Thirumangalam Taluk Police Station,
Madurai District)

...Respondent/Complainant

Criminal Appeal filed u/s.21 of National Investigation Agency Act, 2008, to call for the records in order dated 05.01.2024 in Crl.M.P.No.2579 of 2023 in Spl.S.C.No.6 of 2022 on the file of the Special Court under NIA Act 2008, (Sessions Court for Exclusive Trial of Bomb Blast Cases), Ponnammallee, Chennai and set aside the same and release the petitioner on bail.



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For Appellant : Ms.S.Nadhiya
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

The instant appeal has been preferred by the accused, challenging the order passed in Crl.M.P.No.2579 of 2023 in Spl.S.C.No.6 of 2022 dated 05.01.2024, by the Special Court under NIA Act 2008, (Sessions Court for Exclusive Trial of Bomb Blast Cases), Ponnammallee, Chennai dismissing the bail application filed by him.

2. The appeal arises under the following circumstances.

(i) The appellant is facing trial before the Special under NIA Act, 2008, (Sessions Court for Exclusive Trial of Bomb Blast Cases), Ponnammallee, Chennai, for the alleged offences under Sections 120-B, 109, 307, 153(4) IPC read with 3, 4 IPC with Sections 4(a), 4(b) punishable under Section 4(i) and 4(ii), Section 6 read with 4(a), 4(b) punishable under Sections 4(i), 4(ii) of Explosive Substances Act, 1908 (Act 54 of 2001) and



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149 IPC and Sections 16(1)(b), 18 and 20 of Unlawful Activities (Prevention) Act, 1967 (Amendment Act 2004). Pending investigation in the said case, he was arrested on 27.03.2013 and released on bail on 08.08.2013.

(ii) Thereafter, the appellant appeared before the trial Court. On 29.08.2022, he neither appeared nor filed a petition before the trial Court under Section 317 Cr.P.C., to dispense with his appearance. Hence, the trial Court issued a Non-Bailable Warrant.

(iii) The appellant, thereafter surrendered before the trial Court on 04.01.2023 and filed a petition to recall the Non-Bailable Warrant. However, the said petition was dismissed. Thereafter, the appellant filed a bail application in Crl.M.P.No.2579 of 2023, which was also dismissed by the trial Court on 05.01.2024. Aggrieved by the same, the appellant has preferred the above appeal.



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3. Ms.S.Nadhiya, learned counsel for the petitioner submitted that after the appellant's release on bail in 2013, the appellant has been regularly appearing before the trial Court and hence his absence on 29.08.2022 was neither willful nor wanton, and in any case, the appellant is in custody since 04.01.2023 when he again surrendered before the trial Court and prayed for allowing the appeal.

4. The learned Additional Public Prosecutor *per contra* submitted that the appellant is habitually absconding; that on 11.07.2016, he did not appear before the trial Court and a warrant was issued against him. When the respondent constituted a special team to apprehend him, he surrendered before the trial Court on 08.12.2016. Even on this occasion, the appellant failed to appear on 29.08.2022 and only after the constitution of special team to apprehend him, he surrendered on 04.01.2023; and that since the appellant is habitual absconder, he is not entitled to any indulgence.



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5. Admittedly, the appellant was released on bail on 08.08.2013 pending investigation and he was remanded pursuant to issuance of non bailable warrant for his absence. It is seen that the appellant had been appearing before the trial Court after his release on bail. It is also seen that on an earlier occasion, for the appellant's absence, the trial Court had issued warrant on 11.07.2016, and on the application of the appellant, it was recalled on 08.12.2016. This is the second time that a non-bailable warrant has been issued for the absence of the appellant before the trial Court. It is also seen that the appellant did not appear even on the next hearing date and surrendered before the trial Court on 04.01.2023 after four months. Since the appellant was already on bail and was appearing before the learned Trial Judge regularly except on two occasions, the appellant cannot be indefinitely confined in prison. For his absence, the second time, he has already suffered incarceration for more than one year and three months.

9. Hence, considering the fact that the appellant was already released on bail; and that he has surrendered and remanded pursuant to non bailable



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warrant issued by the trial Court and is in custody since 04.01.2023 and that the charges are yet to be framed, we are of the view that the appellant can be released on bail on stringent conditions so as to ensure his appearance before the trial Court. Hence, the order of the trial Court made in Crl.M.P.No.2579 of 2023 in Spl.S.C.No.6 of 2022 is set aside.

7. Therefore for the above reasons, this appeal deserves to be allowed and the accused is set at liberty on the following conditions:

(i) The appellant shall execute a bond and furnish two sureties for a likesum of Rs.50,000/- [Rupees Fifty Thousand only] each, and one of the sureties should be a blood relative to the satisfaction of the learned Special Court under NIA Act 2008, (Sessions Court for Exclusive Trial of Bomb Blast Cases), Ponnammallee, Chennai;

(ii) The appellant shall appear and sign before the trial court daily 10.30 a.m. until further orders;



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(iii) The appellant shall surrender his Passport (if any) before the trial court and if he does not hold a passport, he shall file an affidavit to that effect in the form that may be prescribed by the trial court. In the latter case the trial court will if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said period, the trial court will be entitled to act on the statement of the appellant;

(iv) The appellant shall cooperate with the investigation;

(v) The appellant shall not tamper with evidence and indulge in any other activities which are in the nature of preventing the investigation process;

(vi) The appellant shall inform the trial court the address where he resides and if changes his address, it should be informed to trial court;



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(vii)The appellant shall use only one mobile phone during the time he remains on bail and shall inform the trial court his mobile number;

(viii)The appellant shall also ensure that his mobile phone remains active and charged at all times so that he remains accessible over phone throughout the period he remains on bail;

(ix)The trial court will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out.

[MSRJ] [SMJ]
12.04.2024

Anu
Speaking/Non-Speaking order
Neutral Citation: Yes/No
Issue order copy by 15 .04.2024
Upload the order forthwith.



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To

1.The Special Court under NIA Act 2008,
(Sessions Court for Exclusive Trial of Bomb Blast Cases),
Ponnamallee, Chennai

2.The Deputy Superintendent of Police,
SID CBCID,
Madurai.

3.The Superintendent of Prison,
Central Prison, Puzhal-II, Chennai.

4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

Anu

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