



WEB COPY



Crl.A.No.375 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.375 of 2023

B.Seyad Ali @ Zubair @ Anees @
Abubacker @ Vinjani (Scientist)
(Now confined in Sub-Jail,
Ponnamalee, Chennai)

...Appellant/A-13

vs.

The Deputy Superintendent of Police,
National Investigation Agency,
Cochin (Camp at Chennai)
(R.C.No.2/2020/NIA/DLI)

...Respondent/Complainant

Criminal Appeal filed under Section 21 of NIA Act, to call for the records in Crl.M.P.No.108 of 2023 dated 31.01.2023 in Spl.S.C.No.23 of 2022 on the file of the Special Court under the NIA Act, 2008, Chennai at Poonamallee and set aside the same and grant bail to the appellant.

For Appellant : Mr.P.Pugalenth

For Respondent : Mr.R.Karthikeyan



Crl.A.No.375 of 2023

Special Public Prosecutor
JUDGMENT

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

The instant appeal has been preferred by the appellant herein who is arrayed as A13 and facing trial in Special S.C.No.23 of 2022, challenging the order passed by the Special Court for Exclusive Trial of Bomb Blast Cases, Chennai, Poonamallee made in Crl.M.P.No.108 of 2023 dated 31.01.2023, dismissing the bail application filed by the appellant.

2.The brief facts leading to the filing of the above appeal are as follows:

(i) The accused was arrested on 17.12.2020 for the offences under Section 465, 468, 471 and 120B IPC by the Inspector of Police, 'Q' Branch, CBCID, Chennai.

(ii) On 17.01.2020, the Government of India, in exercise of the powers under sub-section 4 of Section 6 r/w Section 8 of the National Investigation Agency Act, 2008, directed the respondent to take up the



Crl.A.No.375 of 2023

investigation. Hence, the case was re-registered as

R.C.No.02/2020/NIA/DLI for the offence under Sections 465, 468, 471 r/w 120B IPC and 13 and 18 of the UA (P) Act.

(iii) The National Investigation Agency took all the accused into custody, and during the investigation, the respondent collected the evidence and seized several incriminating materials from the accused. On 23.06.2020, they laid the final report against the appellant and other accused for the offence under Sections 120B r/w 465, 468, 471 and 201 IPC, Section 25(1-A) of the Arms Act and Sections 17, 18, 18B, 19 and 39 of the UA (P) Act, after obtaining sanction from the Government of India. A5 filed bail applications before the trial Court, which were dismissed. Thereafter, the appellant herein filed a bail application in Crl.MP.No.108 of 2023 which was dismissed on 31.01.2023. Challenging the said order, the appellant has preferred this appeal.

(iv) It is the case of the prosecution as revealed from the final



Crl.A.No.375 of 2023

report that the accused person had conspired with each other and fraudulently activated Subscriber Identity Module (SIM) cards of AIRTEL company by using the identity documents of various persons without their knowledge and consent with the help of A1 to A4; that the fraudulently activated SIM cards were purchased by A5 and handed over to A11-Khaja Moideen @ Khaja Mohideen @ Jalal, who was associated with internationally proscribed terrorist organization viz., Islamic State of Iraq and Syria (ISIS); that pursuant to the conspiracy, A11 handed over the SIM cards to his associates viz., A6 to A10 for conspiring and preparing for terrorist acts to organize conspiracy meetings, recruit persons, collect prohibited arms and ammunition, procure jungle camping equipment and raise funds to wage *jihad* after establishing a *Wilayah* (province) of ISIS/Daish near forests of South India and to launch terrorist acts at police and prominent places and prominent Hindu leaders.

(v) The role played by the appellant as per the supplementary final report is that he was attracted towards the ideology of ISIS / Daesh and was associated with the main accused for furthering the activities of ISIS /



Crl.A.No.375 of 2023

Daesh in India; and that pursuant to the conspiracy, the appellant herein procured Potassium Nitrate and other articles for making IEDs, and tested IEDs by using Potassium Nitrate, sugar and other articles, and created the mechanism for operating IED by using Bluetooth module, Wi-Fi module, PIR sensor etc.

3. Heard, Mr.P.Pugalenth, learned counsel for the appellant and Mr.R.Karthikeyan, the learned Special Public Prosecutor for the respondent/State.

4. Learned counsel for the appellant submitted that there is absolutely no evidence to show that the accused had participated in the conspiracy and no *prima facie* case has been made out as against him; that the co-accused A5 was released on bail by this Court in Crl.A.No.287 of 2023 dated 20.12.2023 since the accused therein was in custody for more than 4 years and the charges were yet to be framed by relying upon the Judgement of the Hon'ble Supreme Court in Union of India vs. K.A.Najeeb, reported in (2021) 3 SCC 713.



WEB COPY

5. Learned Special Public Prosecutor per contra submitted that there is a *prima facie* evidence to establish the allegations in the charge sheet and submitted that LW 143 to LW 149, protected witness LW 150 and LW 151, LW 152 to LW 169 besides Doc.No.222 make out a *prima facie* case as against the petitioner, and therefore in view of Section 43-D(5) of the UA (P) Act, the appellant is not entitled for bail. The learned Special Public Prosecutor further submitted that the allegations against the co-accused are different and the appellant herein stands under different footing.

6. We have carefully considered the rival submissions on either side and perused the materials available on record.

7. It is seen from the records that the appellant is alleged to have purchased Potassium Nitrate, Sugar and other articles for operating IED as a preparation to do violent *jihad* for furthering the activities of ISIS/Daesh in India. LW 146 speaks about the secret meeting held between the appellant and others about ISIS and violent *Jihad*; LW 147 speaks about



Crl.A.No.375 of 2023

the travel plan of the appellant to Bangalore for performing Hijrah to establish ISIS in India; LW 154 speaks about the meeting of the appellant at Cuddalore to discuss about *Jihad* and to join ISIS; LW 160 speaks about the appellant's association with the main accused, A-11 viz., Khaja Mohideen. The fact that the appellant had destructed the pen drive is sought to be established through witnesses LW 161 and LW 162. Thus, we are of the view that this *prima facie* case to attract the offences under Chapter 4 and 6 of the UA(P) Act against the appellant. Therefore, in view of the bar under 43 D(5) of UA(P) Act, the appellant would not be entitled for grant of bail at this stage.

8.It is a fact that this Court had granted bail to A5 by relying upon the judgement of the Hon'ble Supreme Court in ***Union of India vs. K.A.Najeeb***. In yet another case in Crl.A.No.340 of 2023 dated 09.11.2023, we had held that whether the detention would offend Article 21 of the Constitution of India would depend on the facts and circumstances of each case. The gravity of the offence, the role played by the accused, the nature of the evidence relied upon by the prosecution and the probable punishment



Crl.A.No.375 of 2023

are factors which would determine whether the incarceration would offend

Article 21.

9. As regards this appellant, we are of the view that considering the gravity of the offence and the role played by the appellant, his detention as on date is not violative of Article 21 of the Constitution of India. Therefore, we are of the view that the appeal deserves to be dismissed as we are not inclined to grant bail to the appellant for the present.

10. Hence, this Criminal Appeal stands dismissed. The order dated 31.01.2023 made in Crl.M.P.No.108 of 2023 in Spl.S.C.No.23 of 2022 on the file of the Special Court under the NIA Act, Poonamallee, is hereby confirmed.

(M.S.R.,J)

(S.M.,J)

18.06.2024

Index : yes/no

Neutral citation : yes/no

Anu



WEB COPY



Crl.A.No.375 of 2023

Copy to :

1.The Special Court under the NIA Act,
Poonamallee.

2.The Deputy Superintendent of Police,
National Investigation Agency,
Cochin (Camp at Chennai)

3.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.375 of 2023

M.S.RAMESH,J.

and

SUNDER MOHAN,J.

Anu

Crl.A.No.375 of 2023



WEB COPY



Crl.A.No.375 of 2023

18.06.2024