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Crl.A.No.430 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.No.430 of 2024

Kabilan @ Kabilar

... Petitioner

Vs.

Union of India represented by
The Superintendent of Police,
National Investigation Agency, Chennai Branch,
(in RC No.33/2022/NIA/DLI)

... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to call for the records in Crl.M.P.No.157 of 2024 dated 25.03.2024 in Spl.S.C.No.29 of 2022 on the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Cases), Chennai at Poonamallee, Chennai and set aside the same.

For Petitioner : Mr.R.Sankarsubbu

For Respondents : Mr.AR.L.Sundaresan
Additional Solicitor General of India
asst. by Mr.R.Karthikeyan
Special Public Prosecutor for NIA



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ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

Under assail is the order dated 25.03.2024 in CrI.M.P.No.157 of 2024 in Spl.S.C.No.29 of 2022.

FACTS IN BRIEF:

2. The petitioner is accused No.3. He was charged for an offence under Section 25(1)(a), 25(1AA) and 25(1B) of the Indian Arms Act and Section 4 of the Explosives Substances Act, 1908 and Sections 13, 17, 18B, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 and Sections 121A, 122a, 123 of IPC r/w 120B IPC.

3. The petitioner is a B.Sc Graduate, besides PG Diploma in Sanitary Inspection and served as Sanitary Inspector in Chennai Corporation over one year from May 2020 to April 2021.

4. The original case was registered at Omalur Police Station at Salem District vide FIR No.302 of 2022 dated 19.05.2022. Initially, it was registered



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against two accused persons namely Naveen and Sanjai Prakash. Subsequently,

the appellant herein has been implicated as accused No.3 in the criminal case.

The case was registered on recovery of two country made pistols, ammunitions and gun powder etc., from A1 and A2 on a motor cycle bearing registration No.TN45 AJ 3152 by the Tamil Nadu Police during vehicle checking near Puliampatti Division by Tharamangalam Inspector (Incharge), Omalur Police Station on 19.05.2022.

5. Based on a Memorandum of Director General of Police dated 03.06.2022, the case was transferred to 'Q' Branch CID, Salem for further investigation. The Inspector of Police, 'Q' Branch re-registered the said case as Crime No.01 of 2022.

6. Considering the gravity of the offence and facts involved, the Government of India, Ministry of Home Affairs, CTCR Division, North Block, New Delhi vide their order F.No.11011/61/2022/NIA dated 24.06.2022 entrusted the investigation to the National Investigation Agency as per powers conferred under Section 5, Section 6 r/w Section 8 of the National Investigation Agency Act, 2008. Consequently, the National Investigation Agency, New Delhi took up the investigation by re-registering the Original case as RC-



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7. As per the prosecution, the investigation disclosed that the accused persons A1 to A3 were inspired by LTTA (Liberation of Tamil Tiger Ealam), which is a proscribed terrorist Organisation listed in the first schedule as per the proviso under Section 2(1)(m) of the UA(P) Act, 1967 and its Supremo Velupillai Prabhakaran through online websites and LTTE related literatures/postings etc. The accused persons associated themselves with a terrorist organisation LTTE, with an intention to further its activities in Tamil Nadu and wanted to create/establish an Organisation similar to LTTE in Tamil Nadu for fighting and waging war against the Government of Tamil Nadu/Government of India through armed struggle to achieve their objective with the help of Seelan Murugan of German (allegedly a member of intelligence section of banned LTTE), one Kishok and other suspects of LTTE members.

8. The investigation further disclosed that after thorough planning and preparatory work by the accused persons, they had decided to destroy private commercial sand quarry and some random TASMALC wine shops in Salem, as the accused persons strongly believed that they represent symbols of



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Government and that quarries plunder natural resources, state-run liquor shops (TASMAC) that is a social menace, drug traffickers, who cause health hazards to the general public are to be targeted. They had chosen 18th May 2022 as their first operation day as it marks the Mullivaikkal Remembrance Day, which has been observed by Srilankan Tamil people and supporters of LTTE to pay homage to those who were killed and died in the final stages of the Sri Lankan Civil War.

9. The investigation disclosed that the accused A1 to A3 had hatched criminal conspiracy to achieve their illegal object and act preparatory to the commission of a terrorist Act in A1's room, which was located in the 2nd floor of the residence located at Attur bye pass main road, Sri Ayyanarappan Traders, Erumaplayam Service Road, Salem District, Tamil Nadu during the year 2019 and 2nd criminal conspiracy, the accused A1 to A3 hatched criminal conspiracy to achieve their illegal object and act preparatory to the commission of a terrorist act in a rented house of A1 and A2 owned by one Radhakrishnan located at No.25/1, First Floor, near Chettychavadi fair price shop, Zoological park road, Chettychavadi, Salem during the month of May, 2022 and also accused A1 to A3 had hatched criminal conspiracy to achieve their illegal object and acted preparatory to the commission of a terrorist act in the road side



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sweet corn shop, which was run by A1 and A2 located behind cloak room, near New Bus stand, Salem during the 2nd week of May 2022.

10. The accused A1 to A3/Appellant hatched criminal conspiracy to achieve their illegal object and act preparatory to the commission of a terrorist act on a hill top of Uthumalai near to Seelanayakanpatti Bye pass, Salem. The said hilltop is the abode of Uthumalai Balasubramania Thirukoil/Lord Muruga and other religious structures in a wide spread hill top. The A1 to A3 had visited these places more than 10 times in last two years and used to switch off their mobile phones turn on flight mode during their visits. They had hatched criminal conspiracy meetings regarding manufacturing of a greater number of guns, regarding how to hide clues/evidences after commission of offence, testing walkie-talkie, how to manage without using mobile phones, how to recruit more members in the organization. During conspiracy meetings at Uthumalai, the accused Naveen @ Naveen Chakravarthy (A1) had conducted training session to train A2 and A3 on handling weapons, hand to hand combat etc.

11. The investigation disclosed that initially in the year 2019, the accused persons A1 to A3 had formed a gang comprising A1 to A3 and invited



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their friends (Categorized as protected witness C, D and F) to join their gang for fighting against those persons those who destroy the hillocks / hills for profit, set up crusher units, set up quarries by destruction of the natural environment in Tamil Nadu for their own personal benefit. For this purpose, the accused A1 created a whatsapp group adding A2 and A3 and their friends for sharing secret communication. Accused A1 to A3 themselves took pledge that if they join in this group, they should not disclose the objectives of the group or anything to police or anyone and maintain high secrecy about their gang and its activities. The same was informed to (Categorized as protected witness C and D) by the accused Naveen & Naveen Chakravathy (A1).

12. The accused A1 to A3 had hatched criminal conspiracy to achieve their illegal object and act preparatory to the commission of a terrorist act at a place called South Kumaragiri Salem, which is located on Udayapatti Bye pass road which is 06 kms from Salem. The accused persons used to frequently trek upon this small hill top for the purpose of physical training /fitness and discussions related to their agenda and they had held conspiracy meetings to attack Om Shakti Mines and Minerals, since they could have a bird's eye view of the quarry to recce the location for conducting subversive activities.



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13. The accused persons decided to manufacture country made Pistol, Rifle, Bullets, Pipe bombs, grenades, mixture of Explosives for making pipe bomb, extraction of poison from Castor bean seeds and water Hemlock plant, route map to attack the quarries, logo for their organisation called "WTJC" and making diagram for manufacturing illegal firearms and ammunitions etc. Accordingly, the accused Naveen @ Naveen Chakravarthy (A1) and Sanjay Prakash (A2) had purchased raw materials and required tools and equipments in the local shops in and around Salem as well as in online platforms. In pursuance of the said conspiracy hatched by accused A1 to A3, had indulged in preparation and manufacturing of illegal firearm such as one country made pistol without firing pin, hand grenade by mixing Potassium Nitrate, Sulphur and Charcoal in a proportionate ratio of 75:15:10 and tested it on the terrace of residence of A1, located at Attur bye pass main road Erumapallayam Service Road, Salem - 636 015 and made a pipe bomb with mixture of Potassium Nitrate, Sulphur and Charcoal in a proportionate ratio of 75:15:10 and tested it on the terrace of residence of A2 located at No.29. Jambulingam street. VMN Complex, Shevapet, Salem District 636 002 and illegally manufactured one more country made pistol with firing pin, one unfinished rifle explosive substances, several sized knives and other lethal weapons etc., in the rented house located at Chettichavadi, Salem and conducted test fires in order to



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commit subversive activities in Salem and to execute terrorist attack.

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14. The accused had chosen 18th May 2022 as their first operation day as it marks the Mullivaikkal remembrance day, which has been observed by Srilankan Tamil People and supporters of LTTE to pay homage to those who were killed and died in the final stages of the Srilankan Civil War i.e alleged mass killing of Eezha Tamilians by Srilankan Army. The accused persons believed that a strong message will be sent to general public as well as to the Government that LTTE styled organisation has been revived and resurrected in Tamil Nadu.

15. After collection of sufficient prosecutable evidences in this case, the NIA had filed charged sheet against accused persons namely (1) Naveen @ Naveen Chakravarthy M (A1), (2) Sanjay Prakash (A2) and (3) Kabilar @ Kabilan (A3) including the Petitioner/accused A1 and A2 before this Court on 11.11.2022 and assigned as Spl S.C.No.29 of 2022 and copies of charge sheet including redacted copies has been furnished to the accused persons including the Petitioner/Accused A1 and A2 through this Court on 27.12.2022 under acknowledgement.



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16. The Petitioner/accused A1 and A3 were released on bail as per the common order passed by this Court vide criminal appeal No.265, 528 and 529 of 2023 dated 12.12.2023.

ARGUMENTS OF THE APPELLANT:

17. Mr.R.Sankarasubbu, learned counsel appearing on behalf of the appellant would mainly raise the following grounds,

(i) Arrest intimation was not given in writing as ruled by the Hon'ble Apex Court of India.

(ii) There is no prosecutable evidence made available against the appellant/A3 and mere gathering or participating in a discussion with the friends could not be construed as an offence, more specifically would not amount to conspiracy. Thus, the very basis for prosecution itself is infirm and untenable.

(iii) The sanction accorded under Section 45(2) of UA(P) Act is infirm, since there is total non application of mind, which is explicit in the order of sanction. There is no discussion about the materials placed before the



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competent authority and in the absence of any discussion, the sanction order issued has no legs to stand under the scrutiny of law.

(iv) The Government of India, Ministry of Home Affairs accorded sanction under Section 45(2) of UA(P) Act in proceedings dated 10.11.2022 and proceeding of the District Magistrate and District Collector, Salem on the same date proceeding dated 10.11.2022 granting prosecution sanction order under the provisions of Arms Act and under the provisions of the Explosives Substances Act. The above two orders passed by the District Collector are also untenable, in view of the fact that there is no application of mind and further these two prosecution sanction orders are not placed before the competent authority, who accorded sanction under Section 45(2) of UA(P) Act. Thus, sanction is vitiated.

(v) Under Rule 3 of Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008, the time limit for making a recommendation by the Authority is 7 days. Time limit for sanction of prosecution is also seven working days after receipt of the recommendations of the Authority. The said provisions are also not complied with, which would vitiate the entire prosecution case.



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18. The Investigating Officer submitted a report on 07.11.2022. The Authority has forwarded his report on 08.11.2022 to the Ministry within the time limit as prescribed in Rule 3 of Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008. After having satisfied with the materials available on record and facts and circumstances therein, the competent Authority of the Government of India, Ministry of Home Affairs accorded sanction in proceeding dated 10.11.2022. In this context, the petitioner would submit that, the Authority who received the report from the Investigating Officer on 07.11.2022, forwarded the same to the Ministry on 08.11.2022 within a period of one day and it is not possible to scrutinize the voluminous documents produced by the Investigating Officer and therefore, there was total non application of mind. Further, the subjective satisfaction had not arose.

19. To substantiate the above grounds, the learned counsel for the petitioner would rely on the following judgments,

1. *Usmanbhai Dawoodbhai Memon and Others Vs. State of Gujarat*¹

2. *People's Union for Civil Liberties and Another Vs. Union of India*²

3. *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and*

¹ 1988 2 SCC 271

² W.P.(CvI).No.389 of 2002



*Others*³

*4. Mohammed Iqbal M.Shaikh and Others Vs. State of Maharashtra*⁴

*5. State of Maharashtra and Others Vs. Som Nath Thapa and Others*⁵

*6. Prabir Purkayastha Vs. State (NCT of Delhi)*⁶

ARGUMENTS ON BEHALF OF THE RESPONDENT:

20. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India would strenuously object by stating that, the scope of discharge petition need not be expanded for complete adjudication and appreciation of evidences as contended on behalf of the petitioner. It would be sufficient, if sufficient ground is made available and prosecutable evidences are collected and thereafter, chargesheet has been filed. That being the case, the appellant/Accused No.3 have to face the trial and the present case for discharge is devoid of merits. With reference to the ground raised by the petitioner that the sanction was accorded without application of mind and prosecutable evidences available on record, the learned Additional Solicitor General of India relied on the objections filed by the respondent, wherein prosecutable evidences collected including material objects and its detail are stated.

3 1994 4 SCC 602

4 1998 SCC (Cri) 1064

5 1996 SCC (Cri) 820

6 2024 SCC Online SC 934



21. We are inclined to consider the evidences connecting only the appellant/A3 since the present Appeal is filed only by A3 and the same are as under,

The averments in Ground (vi), (ix) & (x) of the appeal are hereby denied. It is submitted that the Appellant / accused No.3 cannot say that the entire prosecution is malice in law. It is further submitted that there are ample prosecutable materials to prosecute the appellant / accused No.3 with the offenses charged for and by his activities has clearly attracted the provisions of Sections 38 & 39 of the UA(P) Act, 1967. It is submitted that a reading of statements recorded under section 161 of CrPC during the investigation by this Respondent has reveals a prima facie case as against the accused persons including the appellant / accused A-3 herein.

ROLE OF THE APPELLANT:

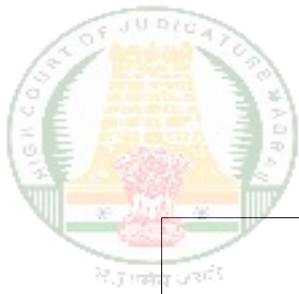
The appellant / accused A. Kabilar @ Kabilan (A-3) had conspired along with Naveen @ Naveen Chakaravarthy M (A-1) and Sanjay Prakash (A-2) formed a terrorist gang with an intent to create a terrorist organization called "World Tamil Justice Court" (WTJC) similar to that of LTTE which is a proscribed terrorist organization under First Schedule of the UA(P) Act, 1967. The accused persons got inspired by the ideology of LTTE through literatures and online contents and through its



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members namely one Seelan Murugan of Germany (a former member of Intelligence section of banned LTTE), one Kishok and other unnamed suspects who were members / sympathisers of LTTE to commit terror activity / subversive activities in Tamil Nadu through armed struggle and to wage a war against the established structures.

LWs	Name of the Witnesses Sh/Smt	Gist of Evidence
LW - 82	(Categorized witness-A) protected	Conspiracy: Statement under section 164 of CrPC of the said protected witness revealed the entire conspiracy hatched by accused A-1, A-2 & A-3 and their preparation for carry out subversive activities. Formation of Terror Gang & Manufacturing of Illegal Firearms and Test fire: He will speak about A-1, A-2 & A-3 were themselves associated with LTTE organization and manufactured illegal firearms & ammunition for subversive activities to be carried out at Salem and other places. Further he will also speak about the test fire conducted by A-1 at his residence near Erumapalayam and test fire as well as test Pipe Bomb conducted at the rooftop of A-2 residence and other relevant fact.
LW - 74	Vignesh, Age 28/2022	He is relative of A-1 and he



LWs	Name of the Witnesses Sh/Smt	Gist of Evidence
	(28.08.1995), S/o Selvam, No-A7, Kurinji Nagar, Housing Board, Kichipalayam, Salem, Tamil Nadu-636015.	will speak about the book caption as Methgu Prabhakaran Puratchi Kara Sinthanaikal given to A-1 as requested by A-1 Further he also speak about A-2 & A-3 used to visit Home to Home packer & Movers and pickup A-1 by their motor cycle by saying they are going to trekking in Uttumalai and its nearby hills. Further A-I also used to show the videos related to LTTE to him through A-I's mobile and other relevant fact.
LW - 76	L. Malaviya, Age-30/2022, W/o Logeswaran, No.644, Ayyanarrappan Kovil Street, Chinnaputhur, Kallankuthur, Salem, Tamil Nadu	She is kabilar's (A-3) sister and he will speak about in her marriage participated to kabilar's friend of A1, A-2 and Surya Kumar, Kishore Jose.

22. Relying on the above materials as stated in the objection filed by the respondent, the learned Additional Solicitor General of India would contend that the grounds raised by the appellant are insufficient to form an opinion that there is no basis to proceed with the prosecution case. The decision of the Trial Court rejecting the discharge petition is well found and the present Appeal is to be rejected.



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23. With reference to the sanction accorded by the Competent Authority under Section 45(2) of UA(P) Act, the learned counsel for the petitioner mainly contend that there is no application of mind. The said ground requires consideration in view of the fact that it is commonly taken by the accused, wherever the petition for discharge under Section 227 Cr.P.C is filed.

24. It is relevant to consider the purpose of grant of sanction and the legislative intention for enacting the provision.

25. It is a check and balance contemplated by the Parliament, so as to ensure that prosecution under UA(P) Act is initiated in the presence of materials collected. Subsection (1) to Section 45 enumerates that, “No court shall take cognizance of any offence in the absence of the previous sanction of the Central Government”. The Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 prescribed time limit for making a recommendation by the Authority and time limit for sanction of prosecution. Seven working days of the receipt of the evidence gathered by the Investigating Officer under the Court has been contemplated for making recommendation by the Authority. So also seven working days after receipt of the recommendation of the Authority is granted for sanction of prosecution. The



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Court has to consider that appreciation of materials by the Sanctioning Authority, whether necessary or not.

26. We are of the considered opinion that in the present case the recommendations by the Authority as well as the sanction for prosecution were granted within the time limit as contemplated under Rule 3 and 4 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008. Regarding the application of the mind, we are of the considered opinion that, the recommending Authority as well as the Sanctioning Authority cannot appreciate the materials collected by the Investigating Officer. Any appreciation or consideration or findings in the sanctioning order would undoubtedly cause prejudice to the interest of either of the parties, as the basic principles of criminal justice system require a fair trial before the competent Court of law. Therefore, in the event of any findings by the Recommending Authority or the Sanctioning Authority, it would result in causing prejudice, as there is a possibility of relying on such findings either on the side of the prosecution or accused. Thus, the time limit fixed seven days is only to make recommendation and to sanction prosecution and on perusal materials available, if the Authorities are convinced with the materials, then the sanction would be granted and such a procedure would be



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sufficient for complying with the provision contemplated under Section 45 of UA(P) Act.

27. According sanction is a procedural check contemplated under the special legislation and any consideration on merits by such Authorities would result in affecting the case of the accused or prosecution. Therefore, the ground raised by the Appellant that there is no consideration or application of mind is untenable and deserves no merit consideration.

28. It is needless to reiterate that the scope of discharge under Section 227 Cr.P.C is limited. If the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Therefore, the only requirement is that the materials produced are insufficient for prosecution.

29. In the present case, one of the ground raised by the appellant is that registration of a case under UA(P) Act is excess. We are of the considered opinion that the material produced before us would reveal several facts leading threat to national security and interest and thus, the materials collected by the prosecution would form *prima facie* for conducting a trial and thus, the Trial



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Court in the present case has rightly rejected the petition for discharging the appellant/accused No.3. The materials which we have considered in the present appeal is only for the purpose of forming an opinion that the prosecution is able to establish a *prima facie* case for trial and therefore, the other documents, materials and defense by the appellant/A3 ought to be considered during the course of trial by the competent Court independently. In other words, during the course of trial, the Court shall consider the materials independently and uninfluenced by the observations if any, made in the present order with reference to the facts and circumstances of the case.

30. With these observations, the order made in CrI.M.P.No.157 of 2024 dated 25.03.2024 in Spl.S.C.No.29 of 2022 on the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Cases), Chennai at Poonamallee, Chennai is confirmed. Consequently the Criminal Original Petition stands dismissed. The connected Miscellaneous Petitions, if any, are closed.

[S.M.S., J.]

[M.J.R., J.]

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

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1.(Sessions Court for Exclusive Trial of Bomb Cases), Chennai at
Poonamallee, Chennai

2.Union of India represented by
The Superintendent of Police,
National Investigation Agency, Chennai Branch,
(in RC No.33/2022/NIA/DLI)



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