



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2024

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CORAM:

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

CrL.A.No.706 of 2023

1.Ferose

S/o.Ismayil

2.Mohammed Riyas

S/o.Mohammed Ali

3.Navaz

S/o.Ismayil

...

Appellants /

Accused Nos.4 to 6

versus

Union of India, Rep.by
The Inspector of Police,
National Investigation Agency,
Chennai Branch, Chennai.
(in R.C.No.01/2022/NIA/CHE)

...

Respondent /
Complainant

PRAYER: Criminal Appeal filed under Section 21(1) of National Investigation Agency Act, 2008, calling for the records and set aside the order dated 18.05.2023 in CrL.M.P.No.759 of 2023 passed by the Special Court under the National Investigation Agency Act, 2008, Chennai in R.C.No.01/2022/NIA/CHE on the file of the respondent and enlarge the appellants on bail in R.C.No.01/2022/NIA/CHE on the file of the respondent.



For Appellants : Mr.R.Sankara Subbu
for Mr.S.Mohamed Ansar
For Respondent : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by
Mr.R.Karthikeyan
Special Public Prosecutor for NIA cases

J U D G M E N T

[Order of the Court was made by ***S.M.SUBRAMANIAM, J.***]

Under assail in the present criminal appeal is the order passed by the Special Court under the National Investigation Agency Act, 2008 dated 18.05.2023 in CrI.M.P.No.759 of 2023 in R.C.No.01/2022/NIA/CHE.

2. The appellants herein are the accused nos.4, 5 and 6. They filed bail application before the trial court under Section 167(2) of Cr.P.C. The trial court adjudicated the issues and rejected the application, which resulted institution of the present appeal before this court.

3. The facts in nutshell are that, on 23.10.2022, at 0400 hours, an explosion had taken place in front of a temple, namely Arulmigu Kottai Sangameshwarar Thirukovil at Eswaran Kovil Street, Ukkadam, Coimbatore, Tamil Nadu, wherein a Maruti car bearing Registration No.TN-01-F-6163 was set ablaze. The car was driven by Mr.A.Jamesha Mubeen.



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S/o.Abdul Kadar (Late), who was a resident of 19/61 HMPK Street, Kottaimedu, Ukkadam, Coimbatore. Based on the written complaint of the priest, a case was registered at Ukkadam Police Station, Coimbatore City, in Crime No.207 of 2022 under Sections 174 of Cr.P.C. and 3 (a) of the Explosive Substances Act, 1908, dated 23.10.2022. The Central Government had received information regarding the same and it was opined that a Scheduled Offence under the National Investigation Agency Act, 2008 has been committed.

4. Having regard to the gravity of the offense and national and international ramifications, the Central Government thought it fit and took a decision that an investigation must be done by the National Investigation Agency and accordingly, passed an order in proceedings dated 27.10.2022. Consequently, the investigation has been taken up by the National Investigation Agency. F.I.R. has been registered under Section 3(a) of the Explosive Substances Act, 1908, in NIA Police Station, Chennai, and the original F.I.R. submitted before the Special Court was also taken up for Investigation and relevant provisions under law were altered to Sections 120B, 153A IPC, Section 3(a) of the Explosive Substances Act, 1908, and



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Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967. The accused persons 4, 5 and 6 / appellants herein were arrested on 25.10.2022 at 02.45 hrs and remanded on 25.10.2022 by the learned Judicial Magistrate No.V, Coimbatore.

5. In the above backdrop, Mr.R.Sankara Subbu, learned counsel for the appellants would submit that the bail application was filed under Section 167(2) of Cr.P.C. on the ground that the final report has not been filed before the Special Court. Mere filing of a report would be insufficient to comply with the requirements contemplated under Section 167(2) of Cr.P.C. and thus, the bail application ought to have been considered by the trial Court under Section 173 of Cr.P.C. It is mainly contended that the investigation was incomplete and certain expert reports sent for analysis are also pending. When the investigation is incomplete and police custody petition filed in CrI.M.P.No.614 of 2023 is pending, the charge sheet filed by the respondent cannot be construed with reference to Section 167(2) of Cr.P.C. and thus, the present appeal is to be considered.



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6. In support of the above contention, Mr.R.Sankara Subbu, learned counsel for the appellants relied on the judgment of the Hon'ble Supreme Court in the case of ***Central Bureau of Investigation Vs. Kapil Wadhawan and another*** reported in ***2024 SCC Online SC 66*** wherein the Hon'ble Apex Court made an observation that the respondents could not have claimed the statutory right of default bail under Section 167(2) of Cr.P.C. on the ground that the investigation qua other accused was pending. Both the Special Court as well as the High Court have committed an error of law and accordingly, the statutory bail application was considered by the Hon'ble Supreme Court in the said case.

7. Adopting the same analogy, the present case is to be considered, since the charge sheet has not been filed in entirety and mere filing of the charge sheet cannot be construed as a valid final report within the meaning of Section 173 of Cr.P.C.

8. Mr.R.Sankara Subbu, learned counsel for the appellants relied on the judgment of the Hon'ble Supreme Court in the case of ***Pankaj Bansal Vs. Union of India*** reported in ***MANU/SC/1076/2023*** wherein the Hon'ble



died. The respondent cited 240 witnesses, 230 documents and 191 material objects. The appellants herein are charge sheeted under Sections 34, 120B, 121, 121A, 122 and 153A of IPC, Sections 3, 4 5 and 6 of the Explosives Substances Act and Sections 16, 18, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967.

11. On 18.04.2023, the respondent herein had obtained sanction to prosecute from the Government of India, Ministry of Home Affairs, CTCR Division, to prosecute the accused Nos.2 to 7 under the provisions as stated above. The Special Court takes cognizance of the case and it is numbered as Special S.C.No.2 of 2023.

12. In the case of *Abdul Azeez P.V. Vs. National Investigation Agency* reported in (2014) 16 SCC 543, the Hon'ble Supreme Court made the following observations:-

“3.The petitioners filed Criminal M.C. No.100 of 2013 on 22.10.2013 before the learned Special Court, NIA Cases submitting that they were entitled to get statutory bail under Section 167(2) of the Code of Criminal Procedure (for short “Cr.P.C.”) inasmuch as the investigating agency had failed to



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file the final report within 180 days. It was further submitted that the bank account details and mobile phone call details of the petitioners, as stated in the charge-sheet itself, were yet to be verified and that the charge-sheet filed on 19.10.2013 was not a final report as contemplated under Section 173(2) Cr.P.C. The submissions were negated by the learned Special Court by its order dated 04.11.2013 holding that the petitioners were not entitled to statutory bail under Section 167(2) Cr.P.C., which view was challenged by filing Criminal Appeal No.1711 of 2013 in the High Court of Kerala at Ernakulam. The High Court went through paragraph Nos.17.1., 17.2, 17.3 and 17.8 of the charge-sheet and found that the materials so disclosed and adverted to in the charge-sheet did show that it was a final report. The High Court, thus, dismissed the appeal. The present special leave petition has been filed to challenge the view taken by the High Court.

4. Having gone through the charge-sheet, we are not persuaded to take a different view. The materials adverted to show that it was a final report on the facets investigated into by the investigating agency. Furthermore, the requisite sanctions as required under Sections 18 and 18A of the UAPA and so also under Section 7 of the Explosive Substances Act were also accorded by the concerned authorities. The charge-sheet so filed before the learned Special Court was complete



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in all respects so as to enable the learned Special Court to take cognizance in the matter. Merely because certain facets of the matter called for further investigation it does not deem such report anything other than a final report. In our opinion Section 167(2) of Cr.P.C. stood fully complied with and as such the petitioners are not entitled to statutory bail under Section 167(2) of Cr.P.C.”

13. With reference to the grounds raised by the appellants, it is relevant to consider Section 43D of the Unlawful Activities (Prevention) Act, 1967. The said provision is considered by the trial Court also. Subsection 2 of the Unlawful Activities (Prevention) Act, 1967 reads as under:-

“(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),-

(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court



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may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days.”

14. In the present case, it is not in dispute that the charge sheet has been filed within a period of 180 days as contemplated under Section 43D of the Unlawful Activities (Prevention) Act, 1967. It is further not in dispute that the final report was filed on 20.04.2023. On 02.05.2023, the respondent filed an application for Narco Analysis *vide* Crl.M.P.No.771 of 2023 and the application is pending for disposal with reference to accused No.2, 4, 6 and 8. Mere pendency of the said application would not be a ground to form an opinion that the investigation was not completed. With reference to the police custody petition filed in Crl.M.P.No.614 of 2023 which was dismissed on 08.05.2023.

15. With reference to the legal principle in the case of **Kapil Wadhawan** cited above, the Hon'ble Supreme Court ruled that “the statutory scheme does not lead to a conclusion in regard to an investigation leading to



filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because further investigation remains pending within the meaning of sub- section (8) of Section 173 of the Code.”

16. In the present case, it is not in dispute that the final report was filed on 20.04.2023. The application filed for Narco Analysis is pending for disposal. The said pendency would not be a ground to arrive at a conclusion that the charge sheet has not been filed by the respondent. The respondent has stated that the final report filed would contain 240 witnesses, 230 documents and 191 material objects.

17. The appellants are charge sheeted under the relevant provisions of the Act. That being so, the bail application filed under Section 167(2) of Cr.P.C. is rightly rejected by the trial Court. More so, in the present case,



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Section 43D of the Unlawful Activities (Prevention) Act, 1967 is also rightly considered by the trial Court. Therefore, we do not find any infirmity or perversity with reference to the findings made in the order impugned and consequently, this Appeal is liable to be dismissed. Accordingly, this Criminal Appeal stands dismissed.

[S.M.S.J.] [V.S.G.J.]
04.10.2024

Speaking order

Index : Yes

Neutral Citation : Yes

sri

Copy to:

- 1.The Inspector of Police,
Union of India
National Investigation Agency,
Chennai Branch, Chennai.
- 2.The Deputy Registrar,
Current Section,
High Court of Madras,
Chennai - 600 104.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai - 600 104.



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