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Crl.A.No.955 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2024

PRONOUNCED ON : 25.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Appeal No.955 of 2023

Rahman Sadiq

...Appellant/A11

Vs.

Union of India represented by:
The Inspector of Police,
National Investigation Agency,
Kochi
(in RC No.06/2019/NIA/DLI)

...Respondent/Complainant

Criminal Appeal filed u/s.21 (4) of National Investigation Agency Act, 2008, to set aside the order passed in Crl.M.P.No.736/2023 dated 06.06.2023 on the file of the Hon'ble Special Court Under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases Chennai at Poonamallee, Chennai and grant bail to the Appellant in Spl.S.C.No.20/2022 in RC.No.06/2019/NIA/DLI pending on the files of the Respondent.

For Appellant : Mr.John Sathyan, Senior Advocate
for M/s.I.Abdul Basith
For Respondent : Mr.R.Karthikeyan
Special Public Prosecutor (NIA)



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JUDGMENT

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

The instant appeal has been filed challenging the order in Crl.M.P.No.736 of 2023 in Spl.SC.No.20 of 2022 dated 06.06.2023 passed by the Special Court under the National Investigation Agency Act, 2008/ Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee,

2.The appeal arises under the following circumstances;

(a) On 05.02.2019, at about 11.15 p.m., the defacto complainant and his father were attacked with knives by some accused, they sustained grievous injuries and a case was registered for the offences under Sections 341, 294(b) and 307 IPC by the Thiruvidadaimarudhur Police Station. Since the defacto complainant's father died, the case was altered to 341, 294(b) and 302 IPC.

(b) Subsequently, the case was transferred to the respondent by the



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order dated 05.03.2019 and the respondent registered a FIR in RC/06/2019/NIA/DLI.

(c) The final report in the case was filed by the respondent as early as on 02.08.2019 against the appellant and 15 other accused for the offences under Sections 120B, 341, 294(b), 302, 212 and 153A(1)(b) of IPC, 1860 besides Sections 16(1)(a), 18, 18-B, 19 and 20 of Unlawful Activities (Prevention) Act, 1965 (UAPA).

(d) The appellant who was arrayed as A11 and A12 to A16 were shown as absconding in the said final report.

(e) The respondents took several steps to nab the absconding accused including the appellant and A12 to A16 are yet to be apprehended.

(f) The respondents filed Crl.M.P.No.163 of 2021 before the trial Court to declare the appellant as a proclaimed offender. The trial Court issued notice which was affixed in the conspicuous places at the house of the



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appellant and also published in the news papers. On 05.07.2021, the appellant along with other accused were declared as proclaimed offenders by the trial Court.

(g) Thereafter, the appellant was arrested on 30.09.2021, at about 03.00 p.m.

3.(a) It is the case of the prosecution that the appellant is involved in the conspiracy of the offence of murder and is also involved in the conspiracy to commit various offences so as to create terror in the minds of particular section of people and also general public and thus the accused conducted several conspiracy meetings, pursuant to which, the victims in this case were attacked with knives and were inflicted with heavy cut injuries.

3.(b) It is the prosecution case that so far 50 witnesses have been examined on the side of the prosecution and PW1, PW2, PW35 and PW47 have spoken about the conspiracy meetings held in the house of the



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appellant and other acts committed by him pursuant to the conspiracy.

4.The learned senior counsel appearing on behalf of the appellant would submit that the Hon'ble Supreme Court in Crl.A.No.2503 of 2024 had released all the other accused on bail on the ground that they have been in incarceration for more than 5 years and that the trial would not be completed within a short time and submitted that the appellant stands on the same footing and prayed for the release of the appellant on bail.

5.The learned Special Public Prosecutor per contra, submitted that the appellant cannot claim parity with the other accused as he was absconding and after substantial efforts, he was apprehended only in the year 2021 and that unlike the other accused he was in custody for only 3 years and the trial would be completed within a period of six months as the prosecution proposes to examine only 40 more witnesses.

6.The order of the Hon'ble Supreme Court in Crl.A.No.2503 of 2024



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dated 10.05.2024, granting bail to the other accused reads as follows;

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“It is not in dispute that the appellants in these appeals who are accused Nos.1,2,3,5,6,7,8,17 and 18 have undergone incarceration for more than 5 years and 2 months. As far as the progress of the trial is concerned, it now an admitted position that the evidence of all the protected witnesses has been recorded and now about 40 official witnesses remain to be examined.

The learned Additional Solicitor General appearing for the respondent pointed out the antecedents against accused Nos.3, 17 and 18. He further submitted that the trial can be completed within a maximum period of three months.

We find that the offences registered against accused Nos.3, 17 and 18 are petty offences. As regards the other accused who have applied for bail, no antecedents have been reported. Considering the way in which the trial has progressed, we are unable to accept the submission that the trial will be completed within a short time. Still 40 official witnesses are yet to be examined. Thereafter, there will be examination of a large number of accused under Section 313 of the Code of Criminal Procedure, 1973.

Considering the allegations against the appellants and factual position, we are of the view that the appellants



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deserve to be enlarged on bail, till the final disposal of the case. In view of the apprehensions expressed by the learned Additional Solicitor General that the appellants will indulge in tampering with the evidence, appropriate stringent conditions can be imposed by the Trial Court.”

7.The only difference pointed out by the learned Special Public Prosecutor is that the appellant is in custody only for 3 years and that he was absconding and therefore, the discretionary relief of bail should not be considered.

8.We are of the view that pre-trial detention is not punishment. The appellant has been in custody for 3 years after he was arrested. The fact that he was absconding earlier cannot be a ground to deny bail. At the same time, merely because the other accused were in custody for more than 5 years, it cannot be said that the appellant also should be confined for 5 years. Considering the role played by the appellant and the evidence let in by the prosecution, we are of the view that the appellant's continued incarceration would be in violation of Article 21 of the Constitution of India



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and he would be entitled to bail like the other co-accused who were released on bail by the Hon'ble Supreme Court vide the order passed in CrL.A.No.2503 of 2024. It is the admitted case of the prosecution that no arms were recovered from the possession of the appellant.

9.In ***Union of India Vs. K.A.Najeeb***, reported in 2021 (3) SCC 713 the Hon'ble Supreme Court has held as follows:

“17. It is thus clear to us that the presence of statutory restrictions like Section 43 – D (5) of UAPA per-se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43 – D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”



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10. In *Gurwinder Singh v. State of Punjab and Another*, in **Crl.A.No.704 of 2024 decided on 07.02.2024**, the Hon'ble Supreme Court has distinguished the observations made in *K.A.Najeeb's case* [cited supra] on facts and denied bail to the accused therein, observing that mere delay in trial pertaining to grave offences, cannot be the basis to grant bail.

11. As stated earlier, we are of the view that the role of the appellant/A11 and the evidence let in by the prosecution are such that the observations in *K.A.Najeeb's case* [cited supra] would be applicable to the appellant. That apart in *Shoma Kanti Sen v. The State of Maharashtra and Another* in **Crl.A.No.2595 of 2023, decided on 05.04.2024** the Hon'ble Supreme Court had considered both the aforesaid judgments and had made the following observations.

37. In the case of **K.A. Najeeb -vs- Union of India** [(2021) 3 SCC 713], a three Judge Bench of this Court (of which one of us Aniruddha Bose, J was a party), has held that a Constitutional Court is not strictly bound by the prohibitory provisions of grant of bail in the 1967 Act and can exercise its constitutional jurisdiction to release an accused on bail who has been incarcerated for a long period of time, relying on Article 21 of Constitution of India. This decision was sought to be distinguished by Mr. Nataraj on facts relying on judgment of this Court in the case of **Gurwinder Singh -vs- State**



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of Punjab [2024 INSC 92]. In this judgment, it has been held:-

“32. The Appellant’s counsel has relied upon the case of KA Najeeb (supra) to back its contention that the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and substance. In KA Najeeb’s case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court’s decision to consider bail was grounded in the anticipation of the impending sentence that the respondent accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb’s case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future. However, in the present case the trial is already under way and 22 witnesses including the protected witnesses have been examined. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organization involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process



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of justice. Therefore, mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail. Hence, the aforesaid argument on the behalf the appellant cannot be accepted.”

38. Relying on this judgement, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfil the conditions specified in Section 43D (5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Article 21 of the Constitution of India. This was in the case of Najeed (supra), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an accused on bail in spite of the bailrestricting provision of Section 43D (5) of the 1967 Act. Pre- conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post-chargesheet stage has the sanction of law broadly on these reasonings. But any form of deprivation of liberty results in breach of Article 21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprivation must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution’s plea of pre-trial detention, both at investigation and post-chargesheet stage.” [emphasis supplied]



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12. Similarly in a very recent judgment in *Javed Gulam Nabi Shaikh v. State of Maharashtra and Another*, in Crl.A.No.2787 of 2024 decided on 03.07.2024, the Hon'ble Supreme Court had held as follows:

“15. The requirement of law as being envisaged under Section 19 of the National Investigation Agency Act, 2008 (hereinafter being referred to as “the 2008 Act”) mandates that the trial under the Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case and Special Courts are to be designated for such an offence by the Central Government in consultation with the Chief Justice of the High Court as contemplated under Section 11 of the 2008.

16. A three-Judge Bench of this Court in *Union of India v. K.A. Najeeb* reported in (2021) 3 SCC 713] had an occasion to consider the long incarceration and at the same time the effect of Section 43-D(5) of the UAP Act and observed as under : (SCC p. 722, para 17)

“17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a



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reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43- D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

17. In the recent decision, *Satender Kumar Antil v. Central Bureau of Investigation* reported in (2022) 10 SCC 51, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973 would apply:

“We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to



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expedite the process and also a stricter compliance of Section 309 of the Code.”

18. Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.”

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be. [emphasis supplied]

13. We are therefore of the view that besides the above observations of the Hon'ble Supreme Court as regards the grant of bail to an accused facing trial for the offences under Chapter IV and VI of the UA(P) Act, the order



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passed by the Hon'ble Supreme Court in the case of the co-accused would enure in favour of the appellant as the Hon'ble Supreme Court has rejected the submission of the respondent that the trial of the case would be completed within a short time.

14. Considering the nature of allegation and the evidence let in, we deem it appropriate to release the petitioner on bail on very stringent conditions.

15. Accordingly, the Criminal Appeal is 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 the National Investigation Agency Act, 2008, Sessions Court For Exclusive Trial For Bomb Blast Cases Chennai at Poonamallee, Chennai;

(ii) The appellant shall appear and sign before the trial



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court once in a week i.e., on every Monday at 10.30 a.m. until further orders and on all hearing dates;

(iii)The appellant shall stay at Chennai and report before the Respondent's office at Chennai, everyday at 10.30 a.m., except on Mondays and the hearing dates until further orders;

(iv)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;

(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;

(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;



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(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]
25.07.2024

Tsg
Speaking/Non-Speaking order
Neutral Citation: Yes/No

Issue order copy on 25.07.2024
Upload the order forthwith.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

Tsg

To

- 1.The Special Court Under the
National Investigation Agency Act, 2008
Sessions Court For Exclusive
Trial For Bomb Blast Cases,
Chennai at Poonamallee, Chennai.
- 2.The Inspector of Police,
National Investigation Agency,
Kochi.
- 3.The Superintendent of Prisons,
Sub-Jail, Poonamallee.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

Pre-delivery judgment in
Crl.A.No.955 of 2023

25.07.2024