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Crl.A.No.1225 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM :

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

Criminal Appeal No.1225 of 2023

M. Vigneswar Perumal @ Vicky

.. Appellant

Versus

Union of India rep by :
The Deputy Superintendent of Police,
National Investigation Agency,
Kochi (R.C.No.29/2022/NIA/DLI)

.. Respondent

Criminal Appeal filed under Section 21 of NIA Act, to call for the records in Crl.M.P.No.1598 of 2023 order dated 05.10.2023 in Spl.S.C.No.3 of 2023 on the Special Court under the NIA Act 2008(Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai at Poonamallee and set aside the same.

For Appellant : Mr. M.Radhakrishnan
for Mr.P.Pugalenthi

For Respondent : Mr. R. Karthikeyan,
Special Public Prosecutor
for NIA Cases,



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JUDGEMENT

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Under assail is the order dated 05.10.2023 passed by the Special Judge, Special Court under the NIA Act 2008(Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai at Poonamallee in Crl.M.P.No.1598 of 2023 in Spl.S.C.No.3 of 2023.

2. The appellant/A12 claims to be an Indian Citizen and he was working as a driver in the office of the first accused i.e. C.Gunashekaran @ Guna's Office. On 15.12.2022, the first respondent arrested accused no.1, and thereafter, on 12.04.2023, the appellant was arrested after some investigation. Other accused are Srilankan citizens and refugees lodged in Special Camp in Tiruchirappalli in connection with the case registered by NIA, Delhi in FIR No.RC29/2022/NIA/DLI for the offences punishable under Section 120-B IPC, Sections 18, 20, 38, 39 and 40 of Unlawful Activities (Prevention Act) 1967 and Section 8(c) r/w. 21 (c), 23(c), 24, 27(A), 28, and 29 NDPS 1985.

3. Mr. Radhakrishnan, the learned counsel appearing on behalf of the appellant would mainly contend that the Special Court has not considered the fact that the appellant is an Indian Citizen and was working as a driver, with

A1 who is a Srilankan Citizen, charged under NIA Act. Therefore, the case of



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the appellant ought to have been considered for grant of bail. The appellant cannot be treated on par with A1, who is a Srilankan citizen. The appellant/A12 is an Indian Citizen, working as driver and therefore, the case of the appellant is distinct and the offences charged against the other accused may not have any application in respect of the case of the appellant .

4. He would further contend that stringent bail conditions imposed to foreigners under the Unlawful Activities Prevention Act may not be strictly applicable to the case of the appellant and thus, the appellant is entitled for grant of bail.

5. Mr. R.Karthikeyan, the learned Special Public Prosecutor, opposed by stating that the involvement of the appellant in the alleged offences cannot be brushed aside. He effectively assisted A1 for commission of alleged offence and after investigation, charge sheet against the appellant is also filed on 31.07.2023. Though the appellant claims to be an Indian citizen, he has association with LTTE organisation and during investigation, it is found that he was a member of LTTE and effectively participating in the activities of the banned organisation. Thus, the Trial Court is right in rejecting the bail application.



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6. We have considered the contentions of the respective parties to the lis and the allegations in the charge sheet filed by the respondent would reveals as follows :-

" Investigation further revealed that the accused A-4, A-7, A-9, A-11, A-12 and A-13 knowingly and willingly assisted the accused A1, A2, A3, A5, A6, A10, who are leaders of LTTE for collection, safe custody and transfer of such channeled Hawala Cash and gold from Sri Lanka to India for the use of LTTE. They further acted as benamis to the LTTE leadership by allowing them to acquire movable and immovable properties, intended as reserve wealth of LTTE to liquidate as and when required by the prescribed terrorist organisation and by willfully allowing the LTTE leadership to use their bank accounts for facilitating illegal financial transactions. "

7. We have carefully gone through the findings of the Special Court in the order impugned. Section 43(D)(5) of the UAP Act reads as under :-

"5. Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or



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the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true. "

8. Proviso to Sub Section 5 imposes restrictions by stipulating that if there are reasonable grounds for believing that the acquisition against such a person is prima facie true, then such person shall not be released on bail. Though sub section 7 to Section 43-D would have no application in the case of the appellant, still Sub Section 5 imposes certain restrictions for grant of bail. For the purpose of considering the bail application, the allegations in the final report was considered by the Trial Court. The participation of the appellant/A12 is also narrated as stated above. When there are allegations, which are all present during the course of investigation and a final report has already been filed, which was taken into consideration by the Special Court while dealing with the bail application, we do not find any other reasons for the purpose of disagreeing with the views taken by the Trial Court. Pertinently, the appellant has an antecedent wherein a criminal case has been registered by Q Branch CID, Kanchipuram, in Crime No.01/2020 under Section 420, 465, 471, 353, 506(ii), 212 & 34 IPC r/w. 14(A)(b) of Foreigners Act 1946 and Section 12(1)(c), 12(1-A), 12(1)(a), 12(2) of the



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Passport Act 1967 r/w. 109 IPC, 120(B) IPC. In the said case, the appellant is an accused.

9. Considering the facts and circumstances, we do not find any reason to interfere with the findings made by the Special Court for rejection of bail application. The Trial Court elaborately considered the properties seized including Hawala Cash to the tune of Rs.80,67,768/-, 300.500 grams of gold bard, lot of digital devises and documents during such operations at Evening Bazar, Chennai and Orange Palace, Manadi Street. Thus, we are not inclined to consider the present Criminal Appeal. Consequently, the order impugned stands confirmed and the criminal appeal is dismissed.

[S.M.S., J.] [V.S.G., J.]
19.10.2024

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
mrp

To
1. The Deputy Superintendent of Police,
National Investigation Agency,
Kochi .
2. The Public Prosecutor,
High Court,
Madras.

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AND
V.SIVAGNANAM, J.

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