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Crl.A.No.1260 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.04.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.1260 of 2023

M.Mohamed Farook

... Appellant/Accused

vs.

The State Represented by,
The Inspector of Police/Chief Investigation Officer,
National Investigation Agency,
Kochi.

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 21 of the NIA Act, to call for the records in Crl.M.P.No.1514/2023 in RC.No.29/2022/NIA/DLI on the file of Learned Special Court under the National Investigation Agency Act, 2008-Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee and to set aside the Order dated 26.09.2023 in Crl.M.P.No.1514/2023.

For Appellant : Mr.R.Vivekananthan

For Respondent : Mr.R.Karthikeyan

Spl. Public Prosecutor for NIA cases



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JUDGMENT

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

This Criminal Appeal has been filed by the appellant, to call for the records in Crl.M.P.No.1514/2023 in RC.No.29/2022/NIA/DLI on the file of the Special Court under the National Investigation Agency Act, 2008- Sessions Court for Exclusive Trial of Bomb Blast Cases, Chennai at Poonamallee, and to set aside the Order dated 26.09.2023 in Crl.M.P.No.1514/2023.

2. The brief facts leading to the appeal are as follows;

(a) The respondent had registered a case in RC.No.29/2022/NIA/DLI for the offences under Sections 120B IPC, Sec.18, 20, 38, 39 and 40 of the UA(P) Act of 1967 and Section 8(c) r/w 21(c) 23(c) 24, 27A, 28 and 29 of the NDPS Act pursuant to the orders of the Ministry of Home Affairs, Government of India. The respondent had received information that a Sri Lankan drug Mafia controlled by one of the accused, in association with other accused was involved in smuggling drugs, arms, and ammunition from neighbouring countries for the revival of the proscribed terrorist organization LTTE in India.



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(b) During the course of the investigation, the respondent conducted a search in the appellant's shop in Chennai and seized certain mobile phones, SIM cards, Indian currency to the tune of Rs.68 Lakhs in various denominations, 1000 Singapore dollars, gold weighing 300 grams and approximately valued at 18 Lakhs and other documents.

(c) The respondent filed a final report before the trial Court in April 2023, which was taken on file as SC.No.3 of 2023 against 14 accused. However, the appellant is not an accused in the said final report.

(d) Hence, the appellant filed Crl.MP.No.1514 of 2023 before the trial Court, praying for return of the seized articles from his possession.

(e) The respondent filed a counter stating that further investigation is still on and they have sent the mobile phone to forensic science experts to ascertain if there is any incriminating evidence against the appellant and hence, prayed for dismissal of the petition.

(f) The Trial Court held that though the appellant is not an accused, since the seized articles and documents have been forwarded to the CDAC, Thiruvananthapuram, and the report is yet to be obtained, the seized articles cannot be returned and dismissed the petition. Aggrieved by the said order



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of the learned Trial Judge, the appellant has filed the instant appeal.

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3.Mr.R.Vivekananthan, learned counsel for the appellant, submitted that since the appellant is not an accused, the cash and gold seized from the appellant cannot be retained by the respondent, and therefore, he would be entitled to the return of the articles, and that the respondent had not found any incriminating materials against the appellant. The learned counsel also submitted that the appellant has filed an affidavit offering to furnish security to the tune of Rs.90,00,000/- (Rupees Ninety Lakhs Only) and further prayed that this Court may specify the period of validity of the said security.

4. Mr.R.Karthikeyan, the learned Special Public Prosecutor for the respondent, submitted that the further investigation is still being conducted by the respondent, and the respondent has not yet obtained the report from the experts to ascertain the involvement of the appellant in the offence. The respondent had filed a counter stating that certain incriminating materials were unearthed from the data found in the seized digital devices of the appellant and that the value of cash, gold, and Singapore dollars raised a



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suspicion that it was meant for illegal purposes. As regards the affidavit filed by the appellant undertaking to offer security, the learned Special Public Prosecutor, submitted that the security may be made valid till the conclusion of the trial.

5. Admittedly, the appellant is not an accused as on date. When the matter was earlier heard by a co-ordinate Bench of this Court, this Court passed the following order on 22.12.2023;

“After hearing lengthy arguments from Mr.R.Vivekananthan, learned counsel for the appellant and Mr.R.Karthikeyan, learned Special Public Prosecutor, for NIA cases, for the respondent, this Court is convinced that the properties seized from the premises of the appellant can be returned subject to the appellant's satisfying this Court by furnishing adequate security.

2.The appellant is directed to file an affidavit so that the respondent may also get instructions on the basis of the verifiable material whether to return the document accepting the security.”



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6. When the matter was taken up today, the appellant has filed an affidavit of one Aashiq.M, the friend of the appellant, wherein he had offered to furnish security for a sum of Rs.90,00,000/-. The appellant himself has filed an affidavit restricting his claim for the return of the seized articles to the following articles; (1) Gold coloured unshaped metal bar –9 Nos (weighted 300 grams) ; (2) Indian Currencies i.e Rs.68,07,230/- and (3) 1000 Singapore dollars and that he was prepared to give security to the tune of Rs.90,00,000/-. It is seen that though the seizures were made in April 2023, the respondent has so far not found anything incriminating against the appellant to prosecute him. Therefore, the security offered by the appellant and his friend cannot bind them for an endless period. The learned Special Public Prosecutor's request to observe that the security shall be valid till the conclusion of the trial cannot be accepted since the appellant is not an accused. Hence, we propose to fix a time limit for the security to be valid. In the event of any change in circumstances within the said period, it is open to the respondent to make an appropriate application for modification/extension of the validity period of the security.



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7. Considering the fact that the seizure was made in April 2023 and the respondents have so far not collected anything incriminating against the appellant, in relation to the offences investigated by them and the fact that the appellant is willing to offer security to the tune of Rs.90,00,000/- in the nature of FD in the name of his friend Aashiq.M, we are inclined to direct the return of the following articles: (1) Gold coloured unshaped metal bar – 9 Nos (Weighted 300 Grams) ; (2) Indian Currencies i.e Rs.68,07,230/- and (3) 1000 Singapore Dollars to the appellant, on the following conditions;

(a) The appellant shall furnish security to the tune of Rs.90,00,000/- (Rupees Ninety Lakhs only) by way of depositing FD receipts in the name of his friend M.Aashiq. The said M.Aashiq, shall file an affidavit before the trial Court undertaking that he would not encash the FDs, and produce the original FD receipts besides executing a bond for Rs.90,00,000/-(Rupees Ninety Lakhs only).

(b) It is made clear that the security offered by the appellant/third party shall be valid only for a period of 90 days from the date of filing the



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necessary affidavit and executing the bond before the trial Court, as properties seized from a person who is not an accused cannot be retained by the respondent for an indefinite period.

8. In the result, this Criminal Appeal is allowed, and the order passed by the Trial Court in Crl.M.P.No.1514/2023 dated 26.09.2023 is set aside.

(M.S.R.,J.) (S.M.,J.)
02.04.2024

Index : yes/no
Neutral citation : yes/no
Tsg/dk

Copy to:-

- 1.The Special Court under the
National Investigation Agency Act, 2008
Sessions Court for Exclusive Trial of
Bomb Blast Cases, Chennai at Poonamallee.
- 2.The Inspector of Police/Chief Investigation Officer,
National Investigation Agency,
Kochi.
- 3.The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



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