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Crl.A.No.1511 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Appeal No.1511 of 2023

Tada Aslam

...Appellant/A19

Vs.

State represented by:

The Additional Deputy Superintendent of Police,

Special Investigation Division,

Crime Branch CID, Madurai.

(Crime No.1/2013 of CBCID, Tirunelveli)

...Respondent/Complainant

Criminal Appeal filed u/s.21 of National Investigation Agency Act, 2008, to set aside the impugned order dated 24.11.2023 passed by the learned District and Sessions Judge, Sessions Court under Exclusive Trial of Bomb Blast/POTA/NIA Cases, Chennai at Poonamallee, Chennai in Crl.MP No.2227 of 2023 in Spl.S.C.No.9 of 2022 and enlarge the appellant on bail.

For Appellant : Mr.R.Sankarasubbu
for Mr.S.Manoharan



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For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

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

The instant appeal has been preferred by the accused, challenging the order passed in Crl.MP No.2227 of 2023 in Spl.S.C.No.9 of 2022 dated 24.11.2023, by the learned District and Sessions Judge, Sessions Court under Exclusive Trial of Bomb Blast/POTA/NIA Cases, Chennai at Poonamallee, Chennai, dismissing the bail application filed by him.

2. The appeal arises under the following circumstances.

(i) The respondent police registered a case in Cr.No.1 of 2013 against the appellant for the offences under Sections 109, 120(b), 153(A) of IPC, Sections 16, 17 and 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the UA (P) Act) and Section 120 B r/w 25(1-B)(a) of the Arms Act, 1959 on 27.07.2013. Immediately thereafter, the appellant was arrested in the said case.

(ii) The appellant filed several bail applications before the trial Court



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viz., Crl.M.P.Nos.385/2017, 293/2018, 436/2019, 137/2020, 488/2021, 205/2022, 645/2023 and all the applications were dismissed.

(iii) Challenging the order passed in Crl.M.P.No.293 of 2019, the appellant preferred an appeal in Crl.A.No.109 of 2019 before this Court and this Court by order dated 26.06.2019 dismissed the appeal on the ground that the appellant was a life convict, who was convicted in S.C.No.456 of 2000 and that the appellant had played an active role in promoting enmity between different groups on the ground of religion by procuring explosives to be used for the purpose of Jihad against particular community.

(iv) The appellant thereafter filed Crl.M.P.No.2227 of 2023 before the trial Court and the same was dismissed on 24.11.2023 and the said order is under challenge in this appeal.

3. The case of the prosecution is that the appellant is arrayed as Accused No.19; that all the accused entered into a conspiracy to teach a lesson to the Government for not releasing the Muslim convicts interned in prisons for several years and thereby creating disharmony, to disturb public



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order and tranquillity and with intent to strike and annihilate the Hindu leaders in the name of Jihad; and that the appellant is guilty of the offences stated supra.

4. (i) Mr.R.Sankarasubbu, learned counsel appearing for the appellant would submit that the appellant is in custody from 1998 onwards for a different case and he was remanded in the instant case on P.T.Warrant on 16.07.2014. The respondent had not recovered any incriminating materials from the appellant and the appellant is sought to be prosecuted only on the confession of the co-accused.

(ii) The learned counsel further submitted that though he was convicted in a murder case in S.C.No.456 of 2000, the Government had recommended for pre-mature release and this Court had granted interim bail to the appellant. However, the appellant could not be released in view of his detention in the instant case.

(iii) The learned counsel also submitted that though the charges were



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framed in the year 2015 and the prosecution has cited nearly 121 witnesses, the case is proceeding in a very slow pace and only 3 witnesses have been examined and therefore, he is entitled to bail in view of the judgment of the Hon'ble Supreme Court in ***Union of India Vs. K.A.Najeeb***, reported in **2021 (3) SCC 713** and prayed for the grant of bail to the appellant.

5. (i) The learned Additional Public Prosecutor *per contra* reiterated the averments made in the counter affidavit filed on behalf of the respondent and submitted that the appellant had played an active part in the conspiracy and was involved in several sensitive murder cases and has furnished the details of the murder cases registered against the appellant, where he was convicted and prayed for dismissal of the appeal.

6. We have perused the final report and the available materials on record.

7. The appellant has been charged for the offences that fall under Chapters IV and VI of the UA (P) Act. Therefore, there is a statutory



restriction under the proviso to Section 43 – D (5) of the UA (P) Act, while considering the bail application. However, in ***K.A.Najeeb's case*** (cited supra), the Hon'ble Supreme Court observed as follows:

“18. 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.”

8. While considering a similar bail application under the UA(P) Act, in Crl.A.No.340 of 2023, after analysing the judgments of the Hon'ble



Supreme Court, in the aforesaid cases, this Court in its order dated 09.11.2023 had made the following observations.

*“7. Thus, from the observations made in the above judgments, it can be seen that in **National Investigation Agency Vs. Zahoor Ahmad Shah Watali's case** (cited supra), the Hon'ble Supreme Court had observed that the degree of satisfaction to hold that there is a prima facie case for denying bail would differ from the degree of satisfaction to dismiss a discharge petition on the ground that there is a prima facie case. While considering a discharge petition and assessing the prima facie case, it is trite law that even grave suspicion is sufficient to frame a charge. However, we are of the view that while denying the liberty of a person, the test to assess the prima facie case would be different. The liberty of a person cannot be denied on grave suspicion alone. The Act specifically employs the words “reasonable grounds for believing that the accusation against such a person is prima facie true”. Further, we are of the view that the accusation must be not only grave, but the materials in support of the accusation must be cogent at whatever stage the bail application is considered. Thus, there must be something more than grave suspicion while holding that there is a prima facie case to deny bail. The Judgements referred to above would also indicate that the above restriction in the proviso to Section 43 D (5) of the UA (P) Act is a slight departure from the bail jurisprudence, namely that bail is the rule and the jail is an exception. It only means that while considering a bail application, the Courts cannot grant bail on mere asking, and*



there must be reasons for the grant of bail. However, the above restriction found in the proviso to 43 (5) of the UA(P) Act cannot be read to mean that the basic human right or the constitutional right of a person is taken away. Pre-trial detention is an anathema to the Constitution besides being in violation of the basic human right. The Judgments referred to above would also indicate that where the Constitutional Courts find that there is an infraction of the fundamental right under Article 21 of the Constitution of India, the rigours of the proviso would melt down. As to when pre-trial detention would amount to a violation of Article 21 of the Constitution of India, would depend on the facts and circumstances of each case. In one case, the pre-trial detention, even for six months may be in violation of Article 21 of the Constitution of India. In yet another case, pre-trial detention of even three years would not amount to a violation of Constitutional right. This would depend on the gravity of the offence alleged, the role played by the particular accused, the nature of the evidence relied upon by the prosecution, and the probable punishment that could be imposed on the said accused. The liberty of a person pending trial cannot be ordinarily curtailed unless the law and facts warrant such curtailment.

9. Admittedly, the appellant is in custody in this case for the past 10 years. It is also admitted that he is in custody in relation to various other cases as well, since 1998. We may note that all the murder cases registered



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against the appellant were registered in the years 1997 and 1998. In Cr.No.2205 of 1997, the appellant was acquitted by the judgment of this Court on 26.02.2003 in Crl.A.Nos.122 of 2003 to 124 of 2003. Likewise in Cr.No.151 of 1998, the appellant was acquitted by this Court on 18.12.2009 in Crl.A.Nos.1017, 1018 and 1034 of 2007. These facts are admitted in the counter filed by the respondent.

10. The appellant was convicted in S.C.No.456 of 2000 and the Government has recommended for pre-mature release of the appellant, which is pending for approval before the Hon'ble Governor. Therefore, this Court by order dated 06.10.2003 in W.M.P.No.27486 of 2023 in WP No.12560 of 2022 granted interim bail to the petitioner/appellant herein, on the petition filed by his wife. However, it is also reported that the appellant could not be released because of his detention in the instant case.

11. Be that as it may. In the counter, the respondent has stated that the final report was filed in the instant case on 23.01.2014; a further report under Section 173(8) was filed on 18.11.2020; and that so far only 3



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witnesses have been examined by the prosecution out of 121 witnesses.

Therefore, we are of the view that since the appellant is in custody for more than 10 years in the instant case and is in custody since 1998 in relation to other cases, even if we were to accept the respondent's case that the materials against the appellant would lead to conviction against him, the detention pending trial cannot be indefinite. We have already referred to the observations of the Hon'ble Supreme Court in *Union of India Vs. K.A.Najeeb's case* (cited supra), wherein it has been held that the rigours of Section 43 – D (5) of the UA(P) Act would be diluted if the accused had been incarcerated for a long time.

12. Further, though, this Court had earlier dismissed the appeal filed against the dismissal of the bail order, in Crl.A.No.109 of 2019, on the ground that the appellant was serving a life sentence pursuant to conviction in S.C.No.456 of 2000, we are inclined to consider the bail application, as 4 ½ years have elapsed since the dismissal of the earlier order and also the fact that the Government has recommended the pre-mature release of the appellant in the said case. Hence, we are inclined to exercise our powers to



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grant bail to the accused.

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13. Therefore for the above reasons, this appeal deserves to be 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 District and Sessions Judge, Sessions Court under Exclusive Trial of Bomb Blast/POTA/NIA Cases, Chennai at Poonamallee, Chennai;

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



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period, the trial court will be entitled to act on the statement of the appellant;

(iv)The appellant shall cooperate with the investigation;

(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;

(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]
18.01.2024

ars
Speaking/Non-Speaking order



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Neutral Citation: Yes/No
Issue order copy by 19.01.2024
Upload the order forthwith.



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- 1.The District and Sessions Judge,
Sessions Court under Exclusive Trial of
Bomb Blast/POTA/NIA Cases,
Chennai at Poonamallee, Chennai.
- 2.The Inspector of Police,
The Additional Deputy Superintendent of Police,
Special Investigation Division,
Crime Branch CID, Madurai.
- 3.The Superintendent of Prisons,
Central Prison, Vellore.
- 4.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.



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M.S.RAMESH, J

and

SUNDER MOHAN, J

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