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Crl.O.P.No.30555 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

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1.Martin @ Tamil Selvan @ Martin TamilSelvan

2.Gurusamy

3.Madhaiyan

4.Kumar @ Venkatesan @ Palanisamy

5.Raja

6.Durai

7.Krishnan

8.Ravi

9.Muthu @ Pachamuthu

10.Thangapandiyan

11.K.Raja

12.Amalopavam @ Ananthi



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13.Sathya @ Uma @ Deivani @ Yosodha

14.Boothipatti Ramachandran

15.Sundaramurthy

... Petitioners

Vs.

State rep. By
The Deputy Superintendent of Police,
'Q' Branch, Crime Investigation Department,
Dharmapuri.

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C., to direct the Special Court under the Prevention of Terrorism Act (POTA) to recall Non-Bailable Warrant issued against the petitioners on 13.11.2024 and 16.11.2024 in Spl.S.C.No.3/2022 on the file of Special Court for POTA Act Poonamallee to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Criminal Original Petition has been instituted to direct the Special Court under the Prevention of Terrorism Act (POTA) to recall Non-Bailable



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Warrant issued against the petitioners on 13.11.2024 and 16.11.2024 in Spl.S.C.No.3/2022 on the file of Special Court for POTA Act Poonamallee to secure the ends of justice.

2. The criminal case before the Trial Court is pending for the past about 22 years. Protraction and prolongation of trial after its commencement at any circumstances, will not be encouraged by the Trial Court.

3. Section 309 Cr.P.C provide power to postpone or adjourn proceedings. Once the trial commenced, adjournments cannot be granted in a routine manner and adjournments at request, ought to be considered only if the grounds stated are found to be genuine and by recording reasons.

4. The petitioners herein are charged for offences under Sections 120B, 148, 149, 333, 307 IPC r/w Sections 3(2)(b), 3(5) of POTA Act.

5. Mr.R.Sankarasubbu, learned counsel for the petitioners would submit that, petitioners/accuseds were appearing before the Trial Court during all



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hearings. However, they could not able to appear for the trial on 13.11.2024 and 16.11.2024. Learned counsel for the petitioners filed a petition under Section 317 Cr.P.C. The petition was dismissed and Non Bailable Warrant (NBW) was issued. There is no reason to issue NBW, since the petitioners appeared before the Trial Court during all hearings either in person or through their counsels by filing a petition under Section 317 Cr.P.C. Therefore, the present petition is filed to recall the NBW issued against the petitioners on 13.11.2024 and 16.11.2024 in Spl.C.C.No.3 of 2022.

6. It is contended that in respect of three accuseds namely A12, A13 and A19, Section 317 Cr.P.C petition was allowed by the Trial Court. Mr.Sankarasubbu, learned counsel for the petitioners relied on the judgment of the Supreme Court of India in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation***¹ dated 11.07.2022. The following observations are made by the Court,

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

¹ SLP.No.5191 of 2021



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- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or theailable warrants should be preferred. The warrants eitherailable or non-ailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issueailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-ailable warrant should be resorted to. Personal liberty is paramount,



therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

7. He would further rely on the orders passed by the learned Single Judge of this Court in the case of ***Sirugudugu Naga Venkata Durgakumari and Others Vs. Sirugudu Jhansilakshmi²*** dated 24.01.2007, wherein the Court held that the NBW issued to be recalled without the appearance of the accused persons.

8. Mr.Muniyapparaj, learned Additional Public Prosecutor would oppose by stating that, the petitioners/accused are attempting to prolong the trial one way or other and filing unnecessary petitions. The case is pending for the past

² MANU/TN/3019/2007



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about 22 years. The counter filed by the Deputy Superintendent of Police, 'Q' Branch CID, Dharmapuri District is to be taken into consideration, wherein all the details regarding the earlier hearings of the present case has been narrated.

9. We have considered the arguments advanced by the parties.

10. Pertinently, 200 witnesses were cited in the final report. 84 witnesses have already been examined by the Trial Court. 52 witnesses died during pendency of the case. 93 witnesses have been dispensed with by the prosecution. Taking note of these factors and considering the fact that free flow of trial is obstructed one way or other, this Court ought to consider the factual details provided by the respondents in their counter affidavit.

11. The number of petitions filed under Section 317 Cr.P.C from 04.01.2023 by the petitioners/accuseds and the disposal of the Trial Court are as under,



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Sl.NO	Petitioners/ Accuseds	Total No. of hearing	No. of days present	No. of 317 Cr.P.C petitions filed	Allowed	Dismissed
1	Martin @ TamilSelvan @ Martin TamilSelvan (A1)	451	22	429	428	01 (Crl.M.P.no. 2600/2024) (NBW issued on 13.11.2024)
2	Gurusamy (A3)	451	19	432	431	01 (Crl.M.P.no. 2600/2024) (NBW issued on 13.11.2024)
3	Madhaiyan (A5)	451	32	419	418	01 (Crl.M.P.no. 2598/2024) (NBW issued on 13.11.2024)
4	Kumar Venkatesan @ Palanisamy (A6)	454	31	423	422	01 (Crl.M.P.no. 2621/2024) (NBW issued on 16.11.2024)
5	Raja (A7)	451	29	422	421	01 (Crl.M.P.no. 2595/2024) (NBW issued on 13.11.2024)
6	Durai (A8)	451	21	430	429	01 (Crl.M.P.no. 2599/2024) (NBW issued on



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Sl.NO	Petitioners/ Accuseds	Total No. of hearing	No. of days present	No. of 317 Cr.P.C petitions filed	Allowed	Dismissed
						13.11.2024)
7	Krishnan (A10)	454	28	426	425	01 (Crl.M.P.no. 2621/2024) (NBW issued on 16.11.2024)
8	Ravi (A11)	454	37	417	416	01 (Crl.M.P.no. 2621/2024) (NBW issued on 16.11.2024)
9	Muthu Pachamuthu (A15)	451	34	417	416	01 (Crl.M.P.no. 2596/2024) (NBW issued on 13.11.2024)
10	Thangapand ian (A16)	451	33	418	417	01 (Crl.M.P.no. 2596/2024) (NBW issued on 13.11.2024)
11	K.Raja (A18)	451	31	420	419	01 (Crl.M.P.no. 2597/2024) (NBW issued on 13.11.2024)
12	Amalorpava m @ Anandhi (A20)	454	62	392	391	01 (Crl.M.P.no. 2621/2024) (NBW



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Sl.NO	Petitioners/ Accuseds	Total No. of hearing	No. of days present	No. of 317 Cr.P.C petitions filed	Allowed	Dismissed
						issued on 16.11.2024)
13	Sathya @ Uma @ Deivani @ Yasodah (A24)	454	28	426	425	01 (Crl.M.P.no. 2621/2024) (NBW issued on 16.11.2024)
14	Boothipatti Ramachanra n (A25)	451	28	423	422	01 (Crl.M.P.no. 2595/2024) (NBW issued on 13.11.2024)
15	Sundaramur thy (A26)	451	55	396	395	01 (Crl.M.P.no. 2600/2024) (NBW issued on 13.11.2024)

12. Pertinently, the accuseds have filed petitions to recall PW1 to PW83 after completion of their examination. It is not made clear why petitions were not filed then and there during the relevant point of time. The Trial Court in its order dated 18.11.2024, recorded the fact that on 08.07.2024, petition in Crl.M.P.No.962 of 2024 was filed to recall PW1 to PW83, which was allowed by imposing



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condition.

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13. Importantly, the Trial Court is empowered to direct the personal attendance of the accused at any stage of the case under Section 205(2) of Cr.P.C. Therefore, non-appearance of an accused at no circumstances be claimed as an absolute right. The Court is empowered to direct the personal attendance of the accused during the hearing at any stage of the case.

14. Keeping the above provisions in mind, and considering the fact that, within a period of 1 ½ years, 451 hearings were conducted, out of which, the petitioners were present hardly on 22 occasions. Section 317 Cr.P.C petitions filed are more than 400 in numbers.

15. The very statistics provided by the respondents would be sufficient to form an opinion that attempt is made to obstruct the free flow of trial proceedings. Despite the fact that opportunities were granted and many number of Section 317 Cr.P.C petitions filed by the accused persons were allowed by the Trial Court.



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16. The free and fair trial is sine-qua-non of Article 21 of Indian Constitution. It is trite law that justice should not only be done but it should seem to have been done. Therefore, co-operation of the prosecution and the accused persons are to be ensured under the provisions of law. The Trial Court are not expected to grant adjournments in a routine manner. Once trial commenced, the adjournments ought to be granted only on genuine grounds and by recording reasons. Equally the accuseds are expected to co-operate for completion of trial in all respects and they have to file Section 317 Cr.P.C petition only on genuine grounds and it cannot be a routine affair on the part of the accused persons by filing 317 Cr.P.C petitions.

17. Section 317 Cr.P.C stipulates provisions for enquiry and trial being held in the absence of accused in certain cases. Subsection (1) to Section 317 Cr.P.C contemplates that,

At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a



pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

18. Therefore, routine filing of Section 317 Cr.P.C petition need not be considered by the Trial Court in all circumstances. The practice of filing such petitions, in the absence of any valid reason needs no merit consideration. The provisions are provided to dispense with the presence of the accused only on certain exceptional circumstances and the Courts have to consider by recording reasons. Reasons being live link for Section 317 Cr.P.C, it cannot be a mechanical affair.

19. In the present case, the number of Section 317 Cr.P.C petitions filed before the Trial Court during the course of trial is alarming. Therefore, the Trial Court is expected to proceed with the trial without granting unnecessary adjournment and by not entertaining frivolous petitions. In the event of filing frivolous petitions by the accuseds, with an intention to prolong and protract the trial, such petitions are to be rejected in limine, if required by imposing exemplary



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costs. Since the present case is pending for about 22 years, we request the Trial Court to proceed with the trial and dispose of the matter as expeditiously as possible.

20. As far as the NBW issued against the petitioners are concerned, under Section 70(2) of Cr.P.C, the petitioners are at liberty to appear before the Trial Court by filing a petition. If such petition has already been filed, the petitioners shall appear before the Court with a request to recall the NBW and it is for the Trial Court to take an appropriate decision and proceed with the trial without causing any undue delay.

21. As far as the ratio laid down by the Hon'ble Supreme Court of India in the judgment cited on behalf of the petitioners is concerned, the principles enumerated reveals that, the discretionary powers conferred must be exercised judiciously with extreme care and caution. The Courts should properly balance both personal liberty and societal interest before issuing warrants. Therefore, it is not only the personal liberty of the accused persons, but also the societal interest, which is to be taken into consideration by the Trial Courts. So far as the societal



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interest in the present case is concerned, the criminal case is pending for about 22 years and out of 451 hearings, the accuseds have filed 317 Cr.P.C petitions for more than 400 occasions. Therefore, the judgment and the principles applied will have no application with reference to the facts of the present case, since the trial is being obstructed one way or other and the Trial Court is unable to proceed with the matter. That apart, the judgment of the Hon'ble Supreme Court is only relating to issuance of summons, Bailable warrant and when Non Bailable Warrant can be issued. Thus, the facts are also distinguishable and inapplicable to the facts of the case on hand.

22. With these observations, the Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petitions, if any, are closed.

[S.M.S., J.]

[M.J.R., J.]

12.12.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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- To
1. Special Court for POTA Act, Poonamallee
 2. The Deputy Superintendent of Police,
'Q' Branch, Crime Investigation Department,
Dharmapuri.



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