



Crl.A. No.1603 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.S.RAMESH**
and
THE NONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

Criminal Appeal No.1603 of 2024

1.Duraisingavel
2.Palani

.. Appellants

Vs.

State rep. by:
Deputy Superintendent of Police
Q Branch CID
Dharmapuri
(Uthangarai Police Station Cr. Nos.1004/2002
1005/2002, 1006/2002 and Kallavi Police Station
Crime No.434/2002)

.. Respondent

* * *

Prayer : Criminal Appeal filed under Section 34 of the Prevention of Terrorism Act, 2002 to set aside the order in Crl.M.P. No.2623 of 2024 in Spl.S.C. No.3 of 2022 dated 05.12.2024 on the file of Special Court under Prevention of Terrorism Act, Poonamallee, Chennai.

* * *

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.S.Rajakumar,



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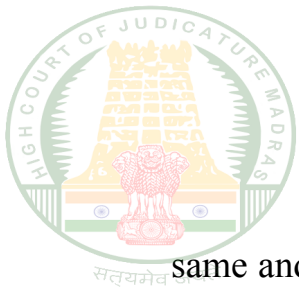


Crl.A. No.1603 of 2024

Additional Public Prosecutor
JUDGMENT
(delivered by N.SENTHILKUMAR, J.)

The present criminal appeal is filed challenging the order of the Special Court under Prevention of Terrorism Act, Poonamallee, Chennai, dated 05.12.2024 made in Crl.M.P. No.2623/2024 in Spl.S.C. No.3/2022.

2. The appellants/accused Nos.22 and 9 were charged for the offence under Sections 120-B of IPC with 22(5), 3(5) and 4(b) of Prevention of Terrorism Act, 2002 (hereinafter referred to as POTA), 22(1)(a) of POTA with 22(5) of POTA, 25(1-B) with Arms Act, 3/1959 and 148, 307, 333 of IPC and 307, 333 and 353 with 149 of IPC. The trial was pending before the Special Court. The first appellant was arrested on 26.11.2002 and was set at liberty on bail by this Hon'ble Court by its order dated 06.12.2007. The second appellant was arrested on 24.01.2003 and was set at liberty on bail by this Hon'ble Court by its order dated 12.04.2007. During the pendency of the on going trial, the appellants could not appear before the Special Court on 13.11.2024 wherein the Special Court had issued a Non Bailable Warrant against the appellants and thereafter, the appellants had filed a petition to recall the warrant by filing Crl.M.P. No.2623 of 2024. However, the Special Court had dismissed the



CrL.A. No.1603 of 2024

same and remanded the appellant/accused to judicial custody. Challenging the said order, the present appeal is filed.

3. Admittedly, the appellants/accused were incarceration for about four years and thereafter bail was granted. Mr.R.Sankarasubbu, the learned counsel appearing for the appellants would contend that, when an accused could not appear before the court and an application under Section 317 of Cr.P.C is filed, the normal practice of the court is to accept the application and grant permission. Per contra, the court had dismissed the application and has issued a Non Bailable Warrant and when the accused surrendered before the Special Court on the next day i.e. on 14.11.2024, the trial court had dismissed the Recall application and remanded the appellants to judicial custody and from thereafter, the accused are in jail.

4. There is substantial force in the argument advanced by the learned counsel appearing for the appellants contending that when a Non Bailable Warrant was issued on 13.11.2024 despite an application was filed under Section 317 of Cr.P.C. and on the next day an application was filed to recall the Non Bailable Warrant in CrL.M.P. No.2623/2024, however, the trial court



Crl.A. No.1603 of 2024

had dismissed the same. The absence of the appellants/accused was bona fide by filing the application under Section 317 Cr.P.C. and they have subjected themselves before the Special Court to demonstrate their bona fides to show before the Special Court that they are appearing before the special court.

5. In view of the same, this appeal is allowed and the order of the Special Court under Prevention of Terrorism Act, Poonamallee, Chennai, dated 05.12.2024 made in Crl.M.P. No.2623/2024 in Spl.S.C. No.3/2022, is set aside. The conditions imposed by the Special court at the time of granting the bail shall be in tact except to the extent of furnishing local sureties to the satisfaction of the Special Court.

[M.S.R., J.] [N.S., J.]
27.02.2025

Asr

To

- 1.The Special Court under Prevention of Terrorism Act,
Poonamallee, Chennai
- 2.The Deputy Superintendent of Police
Q Branch CID, Dharmapuri
(Uthangarai Police Station Cr. Nos.1004/2002
1005/2002, 1006/2002 and Kallavi Police Station
Crime No.434/2002)



Crl.A. No.1603 of 2024

3.The Public Prosecutor, High Court, Madras

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and
N.SENTHILKUMAR, J.

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Crl. A. No.1603 of 2024



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Crl.A. No.1603 of 2024

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