

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 11.08.2025

Pronounced on:12.08.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

CrL.A.(MD) No.719 of 2025

Yasar Arafath

... Appellant

-VS-

1. The Inspector of Police
Melapalayam Police Station,
Tirunelveli City.

2.The Inspector of Police
Anti-Terrorism Squad(ATS)
Madurai

... Respondents

Criminal appeal is filed under Section 21(2) of NIA Act,2008 to set aside the order passed by the learned Principal District and Sessions Judge, Tirunelveli in Cr.M.P.No.2658 of 2025 dated 23.06.2025.

For Appellant : Mr.Karuppasamy Pandian
for Mr.A.Subramanian

For Respondent : Mr.A. Thiruvadikumar
Additional Public Prosecutor



J U D G M E N T

A.D.JAGADISH CHANDIRA, J.,

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This Criminal Appeal has been filed seeking to set aside the order of the learned Principal Sessions judge, Tirunelveli in Cr.M.P.No. 2658 of 2025 dated 23.06.2025.

2. The brief facts of the case are as under:

2.1 Based on the complaint lodged by the defacto complainant Manikandan a case was registered on 16.11.2024 at 13.30 hrs in Crime No. 354 of 2024 under Section 3 of the Explosive Substances Act , 1908 on the file of the Melapalayam Police Station.

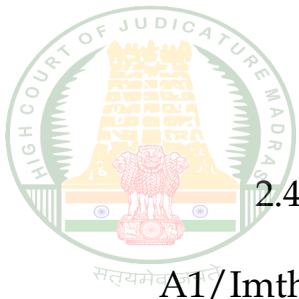
2.2.The defacto complainant who is the lessee of the Alangar theatre had taken the theatre on 12 years lease and after renovating had been running the same for three years. Ganguva featuring Surya and Amaran featuring Sivakarthikeyan were screened in the theatre and on 16.11.2024 at about 3.05a.m., watchman of the theatre had called him over phone and informed that two persons had hurled petrol bomb into the theatre and ran away and he had immediately gone to the theatre and intimated the same to the police and showed them the CCTV footage and he has given complaint and thereby requested the



first respondent police to take action.

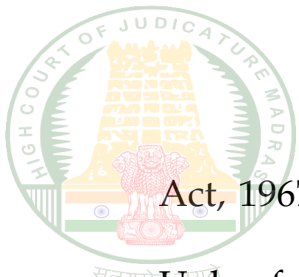
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2.3 The case was taken up for investigation by the first respondent upon recovery of CCTV footages. A2/Mohamed Yusuf Raseen was arrested on 20.11.2024. A3/Syed Mohammed Buhari was arrested on 19.11.2024 respectively and remanded to judicial custody. Based on the investigation first respondent altered the sections of law into Section 196,113(2) of BNS along with Section 3 of Explosives Substance Act 1908 and alteration reports were filed before the learned Judicial Magistrate, Tirunelveli on 19.11.2024 and 20.11.2024 respectively. Subsequently pursuant to the chief officer proceedings in RC No.05915/Crime 3(2)/2024, dated 28.11.2024 investigation in this case was transferred to the second respondent and the second respondent took up the case for further investigation on 08.12.2024 and during the course of investigation further witnesses were examined and based on the materials gathered five other accused were arrested and remanded to judicial custody. Further based on the materials alteration report was filed invoking Sections 61(2),249,196 and 113(2)(b) of the BNS along with Section 3 of the Explosives Substances Act. The said alteration report was filed before the Judicial Magistrate Court No.V, Tirunelveli on 25.01.2025.



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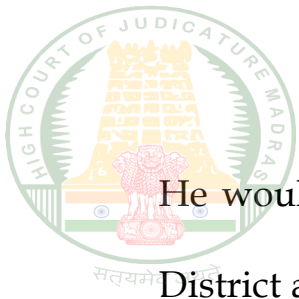
2.4. During the course of investigation it had come to light that A1/Imthiyas who is the member of banned organization Al-Umma was the mastermind behind the incident. He was absconding for more than two months and was eventually arrested on 22.01.2025 and further A8/Sadam Hussain @ Sadam who has harboured the other accused on instructions of A1/Imthiyas was formally arrested on 01.02.2025 while he was in custody in another case at Coimbatore, Central Prison in receipt of another case. A8/Sadam Hussain @ Sadam was produced through P.T.warrant on 05.02.2025 and he was remanded in the present case by the learned Judicial Magistrate on the same day. Subsequently application seeking custody of A8/Sadam Hussain @ Sadam was filed on 06.02.2025 and the same was allowed on 17.02.2025 and A8 was taken into one day custody on 18.02.2025. Whiles, the prosecution filed a petition in Cr.M.P.No.649 of 2025 under Section 193(9) of BNSS seeking extension of thirty days for completion of investigation and filing of final report on 14.02.2025 and the same was allowed by the learned Magistrate on 17.02.2025. Pursuant to the custodial interrogation of A8/Sadam Hussain @ Sadam based on the statement of witnesses and documents collected the investigation officer further altered the charges in to sections 16,18,19 and 20 of the Unlawful Activities (Prevention)



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Act, 1967 in addition to the existing charges. The provision under the Unlawful Activities (Prevention) Act, 1967 were invoked on 20.02.2025 and alteration report to that effect was submitted before the learned Judicial Magistrate No.V, Tirunelveli on 21.02.2025. Subsequently the respondent had filed the final report before the Special Court and the same has now been taken on file in S.C.No.423 of 2025 by the learned Principal District and Sessions Judge, Tirunelveli. Thereafter the petitioner filed CrI.M.P.No.2658 of 2025 seeking bail and the learned Sessions Judge, Tirunelveli had dismissed the application, against which the present appeal has been filed.

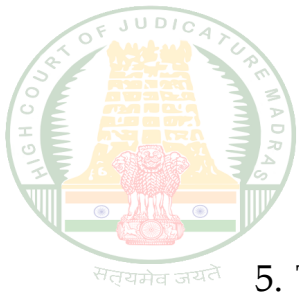
3. The learned counsel appearing for the appellant would submit that the appellant is innocent and he has been falsely implicated in this case based on the confession statement given by A1 and A2 as if the appellant had given asylum to the accused knowing well that they were involved in the offence. He would further submit that excepting the confession and certain call records said to have been collected by the respondents there is no other evidence to incriminate the appellant to the crime. The respondent have completed investigation and filed final report and there is no possibility of interfering with the investigation.



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He would further submit that the appellant is a resident of Tirunelveli District and he is aged about 24 years and a permanent resident and he is ready to furnish sufficient sureties for release on bail. Even taking into consideration the allegations against the appellant it would not fall within the definition of Section 2(k) and Section 15 of the Unlawful Activities (Prevention) Act, 1967. Even as per the charge sheet the appellant is said to have committed the offence punishable under Section 19 of the Unlawful Activities (Prevention) Act, 1967.

4. He would further submit that the statutory restrictions contained in Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 is not absolute for grant of bail and in this case the respondent has cited 110 witnesses and hundreds of documents and in such circumstances the possibility of the trial being completed soon is also not possible. When there is no possibility to complete the trial the appellant's fundamental right has to be protected as enshrined under Article 21 of the Constitution of India and he may be granted bail. In support of his contention the learned counsel appearing for the appellant relied on the judgment of the Hon'ble Apex Court in the case of *Union of India .vs. K.A.Najeeb* reported in *AIR 2021 SC 712*.



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5. The respondent police has filed a detailed counter. The learned Additional Public Prosecutor would submit that the appellant is arrayed as A7 in this case. During the course of investigation it came to light that A1 who is the member of banned outfit namely Al- umma objected to screening of movie Amaran at Alangar Theatre at Melapalayam and that he had in conspiracy with the other accused had directed A2 and A3 to hurl petrol bombs into the theatre screening movie with an intention to instil terror in the minds of the public. To execute the said plan A1 had given financial assistance to A7 and pursuant to the same A2 and A3 prepared petrol bomb and had hurled it into the theatre. Thereafter A2 and A3 attempted to successfully evade arrest and approached A5 who had purposefully, voluntarily abetted the concealment of A2 and A3 by providing monetary assistance and mobile phone with sim card and also by offering his two wheeler. The appellant /A7 being the associate of A1 and A2 knowing their evil designs had voluntarily harboured A2 at the plumbing godown on the night on 17.11.2024 to help them escape from the clutches of law. Subsequently he was also in constant touch with the other accused. Apart from that witnesses L.W.15,L.W.16 and LW.31 have spoken about the involvement of the appellant. The



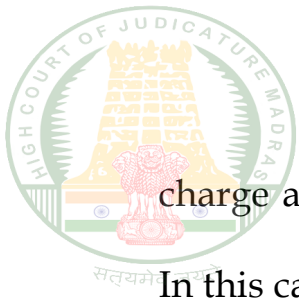
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appellant is involved in serious offence and the principles for grant of bail in serious offences especially under the Unlawful Activities (Prevention) Act, 1967 are governed by the twin conditions laid down under Section 43-D (5) of the act and the conditions being not satisfied by the appellant he may not be entitled for bail, thereby he would seek for dismissal of the bail.

6. This Court perused the entire records and case diary and the final report filed by the respondent police under Section 173 of Cr.P.C.,

7. The allegation against the appellant is that he is an associate of A1 who is a member of the banned organization Al-umma and that A1 in conspiracy with the other accused had in order to create terror in the minds of the people had directed A2 and A3 to hurl petrol bomb into the theatre and thereafter A7 knowing well about the terrorist activities of the other accused had harboured them and given them financial support. The appellant was arrested on 25.01.2025.

8. Admittedly even as per the prosecution no serious damage or destruction had happened and there is no loss to the life. At the most the

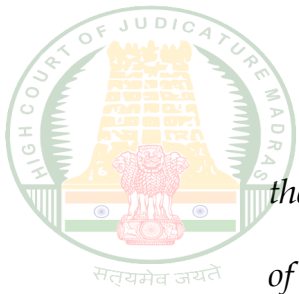


charge against the appellant can be that he had harboured the accused.

In this case the investigation has been completed and the final report has been filed and the case has been taken on file in S.C.No.243 of 2025 by the learned Principal Sessions Judge, Tirunelveli. In this case the respondent police had cited 110 witnesses and more than 100 documents are relied and thereby the likelihood of the trial being completed soon is also not possible.

9. In the case of *Union of India .vs. K.A.Najeeb* as referred above it has been held that presence of the statutory restrictions like 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 *per se* to does not oust the ability of Constitutional Court to grant bail on ground of violation of Part III of the Constitution. In *K.A.Najeeb* referred above it has been held 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



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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.

19. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected"

10. Having gone through the records this Court arrives at the conclusion that the appellant having satisfied the twin conditions under Section 43-D(5) of the Unlawful Activities (Prevention) Act, 1967 is



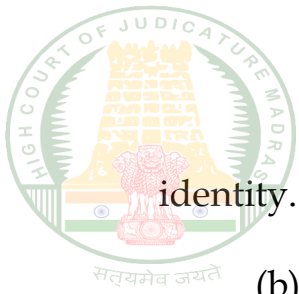
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entitled for bail. Considering the above facts and circumstances of the case and also the fact that the appellant is in judicial custody for more than 150 days and that the charge sheet has already been filed before the learned Principal District and Sessions Judge, Tirunelveli and the case is taken on file in S.C.No.423 of 2025, this Court is inclined to allow the Criminal Appeal by setting aside the order, dated 23.06.2025 made in Cr.M.P.No.2658 of 2025 on the file of the learned Principal Sessions Judge, Tirunelveli

11. Accordingly, the Criminal Appeal is allowed and the order, dated 23.06.2025 made in Cr.M.P.No.2658 of 2025 on the file of the learned Principal Sessions Judge, Tirunelveli, is set aside. The appellant is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties (of which one shall be a Government surety), each for a like sum to the satisfaction of the learned Principal Sessions Judge, Tirunelveli, and on further conditions that:

(a) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Principal Sessions Judge, Tirunelveli may obtain a copy of their valid identity card to ensure their



identity.

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(b)the appellant is directed to appear before the trial Court on all working days at 10:30 a.m., until further orders.

(c)the appellant shall not tamper with evidence or witness either during trial.

(d)On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the appellant in accordance with law as if the conditions have been imposed and the appellant released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[A.D.J.C.,J] [R.P.,J]
12.08.2025

Internet : Yes / No

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To

1. The Principal Sessions Judge, Tirunelveli

2. The Inspector of Police
Melapalayam Police Station,
Tirunelveli City.

3.The Inspector of Police
Anti-Terrorism Squad(ATS), Madurai

4. The Superintendent, Central Prison, Palayamkottai

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5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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6. The Record keeper
Vernacular Records, Madurai Bench of Madras High Court,
Madurai



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**A.D.JAGADISH CHANDIRA, J.
and
R.POORNIMA, J..**

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