

(2006) 01 MAD CK 0065

In the Madras High Court

Case No : Habeas Corpus Petition No. 1077 of 2005

Fathima

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 31-01-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 258, 309, 311, 313, 482

Penal Code, 1860 (IPC) — Section 120B

Citation : (2006) CriLJ 1967

Hon'ble Judges : P. Sathasivam, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; Abudukumar Rajarathinam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—The petitioner, wife of one Sheik Mohideen, Accused No. 8 in Sessions Case No. 8 of 2003 on the file of Special

Court for Bomb Blast Cases, Poonamallee, has filed this Habeas Corpus Petition for production of her husband, the said Sheik Mohideen before

this Court and set him at liberty. In the affidavit filed in support of the above petition it is stated that her husband was arrested on 18-6-1999 and is

languishing in jail over 6 = years and the said prolonged custody is oppressive and illegal. The prosecution though cited 400 witnesses, ultimately

examined 235 witnesses only and two more investigation officers have to be examined. The witnesses examined so far none implicated the detenu,

without any incriminating material, keeping her husband in prolonged custody is unjust and improper. His bail applications were also dismissed with

a direction to complete the trial. In H.C.P. No. 75 of 2005 the Division Bench of

this Court on 20-6-20 05 directed the prosecution to complete the trial before July, 2005. In spite of such orders and even after passing of several months, the trial has not concluded resulting in prolonged custody of the detenu; hence the present petition.

2. Pursuant to the direction of this Court, the respondent filed a counter stating that on 30-5-1999 during early morning, bombs were planted in as

many as seven places in Tamil Nadu in the premises of the Police and Prison Departments (of which one exploded) 3 places in Chennai, at one

place at Coimbatore and at one place at Trichy in pursuance to the conspiracy hatched by the hardcore Muslim fundamentalists Zahir Hussain @

Anus (A-1) and 18 others besides 5 approvers to retaliate and to wreak vengeance for the perceived illtreatment of Muslim prisoners kept in

various prisons of Tamil Nadu. It is further stated that the petitioner's husband Sheik Moideen @ Samosa (A-8) is a long time associate of

accused Zakir Hussain @ Anus (A-1) and a most trusted confidant of S.A. Basha, the founder President of the since banned Al-Umma. He

facilitated accused Zakir Hussain @ Anus (A-1) in selecting the site for planting of bombs at the Office of the Commissioner of Police, Chennai.

On 29-5-1999, he received a box bomb, Pipe Bomb, Booster charges along with pamphlets and other accessories to plant bomb at the Office of

the Commissioner of Police and also explosive substances to be concealed for future unlawful use from Ummar Farook (A-4) and Ammani (A-6).

On 30-5-99, during early morning hours, he had planted a box bomb near the compound wall of the Office of the Commissioner of Police,

Chennai in order to kill police personnel and the public and to cause damages to the properties. He was found in possession oof explosive

substances and other bomb making accessories kept for future unlawful use which were recovered in pursuant to his confession on 17-6-99 by the

Inspector Sushil Kumar and his party who was examined as P.W.194 on 24-6-2005. He is concerned in the following bomb blast cases:

1. F2 Egmore Police Station Crime No. 1018/99
2. D1 Triplicane Police Station Crime No. 695/99
3. F1 Chindadripet Police Station Crime No. 1253/99
4. B6 Cantonment Police Station Crime No. 616/99

5. B1 Bazaar Police Station Crime No. 1163/99

6. Payangady Police Station Crime No. 137/99

7. Kasargode Police Station Crime No. 4/99.

These cases were charged on 18-04-2001 in C.C. No. 3606/2001 pending before 14th Metropolitan Magistrate for committal proceedings. Five

approvers have been examined and committed to Sessions on 23-12-2002. The trial was commenced on 05-01-2004 and so far 222 witnesses were examined.

3. It is further submitted that the husband of the petitioner Sheik Moideen @ Samosa already moved this Court for bail which was dismissed on

21-9-99; vide Criminal O.P. No. 17406/99, Criminal O. P. No. 5046/2001 on 30-03-2001 and Criminal O.P. No. 18026/2002, Criminal O.P.

No. 24993/2003 dated 13-08-2003, Criminal O.P. No. 4425/2004 dated 17-02-2004 and Criminal O.P. No. 16146/2004 dated 20-08-2004.

4. It is true that in the earlier H.C.P. filed by Sheik Moideen, this Court after observing that since the trial will be completed by the end of July,

2005, dismissed the said petition. The Inspector of Police further stated that from 20-6-2005 till October, 2005, the case is progressing at high

speed and 18 witnesses have been examined as shown hereunder:-

1. 24-6-2005 PW194 Sushil Kumar cross examined.

2. 27-6-2005 PW178 Rajagopal cross examined.

3. 29-9-2005 PW208 Santhanam, I.A.S.

4. 13-7-2005 PW209 Asok Kumar, Inspector of Police.

5. 14-7-2005 PW210 Chandrasekar, Inspector of Police.

6. 19-7-2005 PW211 Raman Kutty, S.I. of Police PW212 Ramanathan, Inspector of Police

7. 22-7-2005 PW213 Kanagaraj, Inspector of Police. PW214 Sultan Kabeer PW215 Muthusamy

8. 08-08-2005 PW216 Dinakaran, Inspector of Police

9. 10-8-2005 PW217 Sivakumar, Inspector of Police

10. 12-8-2005 & 16-8-2005 PW218 Rajendran, Inspector of Police.

11. 17-8-2005 PW219 Chakravarthy, Inspector of Police

12. 22-8-2005 & 23-8-2005 PW220 Shanmuga Rajeswaran, IPS.

13. 23-08-2005 PW221 Paranthaman, Inspector of Police

14. 30-8-2005 PW222 Anita Praveen, IAS.,

15. 02-9-2005, 13-9-2005 PW221 Paranthaman, Inspector 37-9-3006, 05-10-2005 of Police cross examined.

In the same affidavit it is further stated that only two more prosecution witnesses have to be examined for completion of prosecution case and the

case was posted on 19-10-2005 for examination of one Gunasekaran, Inspector, BDDS., Chennai. After his examination, the Chief Investigating

Officer Thiru Senthamarai Kannan, I.P.S., Superintendent of Police, alone has to be examined for closing of the prosecution. The above

information are available in the counter affidavit dated 19-10-2005.

5. The same Inspector of Police filed another additional counter affidavit dated 31-10-2005 wherein it is stated that the prosecution case was

going to be completed on 09-11-2005 after the examination of Senthamarai Kannan, I.P.S., Superintendent of Police and the Chief Investigating

Officer and if the petitioner is set at liberty at this stage, the proceedings of the trial will be stopped since the petitioner will abscond.

6. The same Officer has also filed another additional affidavit dated 6-12-2005 wherein it is stated that the petitioner was found in possession of

some explosive materials and explosive substances. It is sufficient to prove his guilt as one of the coconspirator and liable for specific punishment of

conspiracy u/s 120-B I.P.C. The evidence of Sushil Kuamr, Inspector of Police, cannot be thrown out since the evidence of a police should be

considered as that of a public witness unless the officer has got a personal grudge against the petitioner to foist a case. The prosecution has

completed the examination of witnesses on 29-11-2005 and out of 380 witnesses, the prosecution has completed by examining 224 prosecution

witnesses and no more prosecution witnesses are to be examined. The accused has to be questioned u/s 313 of Code of Criminal Procedure soon

and for which the presence of all the accused before the Court is mandatory. The release of the husband of the petitioner at this crucial stage will

hamper the further trial proceedings since there is every likelihood that the petitioner may abscond.

7. Apart from the above information, Mr. Abudukumar Rajarathinam, learned Government Advocate, has also informed us that after examination

of 224 prosecution witnesses, the prosecution side has been closed and the case has been posted to 13-02-2006 for questioning the accused u/s

313 Cr.P.C. It is also brought to our notice that the regular Special Judge was transferred on 15-12-2005 and thereafter the matter was adjourned

on two occasions i.e., on 02-01-20 06 and 20-01-2006 and finally posted to 13-02-2006 for questioning. In such a circumstance, he also prayed

that if the detenu is set at liberty, in view of his past conduct, he will abscond and the trial cannot be proceeded with. In any event, according to

him, the present Habeas Corpus Petition is not the proper remedy and if at all the detenu has any grievance, he can move the appropriate Court for

bail.

8. This is not an ordinary case like other cases. There is no doubt about it. In this case, the prosecution examined as many as 224 witnesses and

closed its side. As said earlier, the case has been posted to 13-02-2006 for questioning u/s 313 Cr.P.C. We are also conscious of the fact that in

our earlier order in H.C.P. No. 1223/2004 and 75/2005 we observed that the trial will reach its finality by the end of July, 2005. However,

considering the examination of large number of witnesses, both chief and cross in respect of each witness, the Court had taken time till November,

2005 for completion of examination of the prosecution witnesses. It is also not in dispute that the Special Judge who was holding the post was

transferred on 15-12-2005 and Thiru Avadi Thiyagaraja Moorthy, another Special Judge, Poonamallee is now in-charge of the said Court. In such

a circumstance, it cannot be concluded that the prosecution either disobeyed or violated the order of this Court. It depends upon the facts of each

case and number of persons to be examined on either side. There is no dispute with regard to the proposition that the accused are entitled speedy

trial and if there is inaction on the part of the prosecution, they are entitled to be released. However, the said principle cannot be applied

mechanically to all cases. We do not want to go into the merits of the charges levelled against the husband of the petitioner. Based on the materials

it is for the Special Court to decide one way or other. In view of the peculiar factual position and large number of witnesses examined on the

prosecution side, we are of the view that the following cases cited by Mr. R. Sankarasubbu, learned counsel for the petitioner, are not helpful to

the case on hand:

- (i) State of U.P v. Chandra Shekhar Shukla 2001 SCC 400
- (ii) A.R. Antulay etc. v. R.S. Nayak 1992 1 Crimes 193 SC
- (iii) S.C. Legal Aid Committee Representing Undertrial Prisoners v. Union of India 1995 SCC 39
- (iv) Shaheen Welfare Assn. v. Union of India 1996 SCC 366
- (v) Hussainara Khatoon (I) v. Home Secretary 1980 SCC 23
- (vi) Kadra Pehadiya v. State of Bihar 1981 SCC 791
- (vii) Thyagu @ Thiyagarajan v. Inspector of Police, Baragur W.P. No. 5380/90 dated 23-8-1990-D.B
- (viii) Jainullah v. State by DY. S.P, CBI, Chennai HCP No. 595/2002 dated 19-2-2003-DB
- (ix) Nallarasan v. DY.S.P, Q Branch CID, Cuddalore HCP No. 443 of 2003 etc., dated 24-4-2003-DB
- (x) F.M. Ahmed Gnanar v. State BY DY.S.P., CBI, Chennai HCP No. 1487/2003 dated 18-12-2003-DB
- (xi) Ravichandran v. State rep. By Inspector of Police, Special Investigation Team CBCID, Chennai HCP Nos. 1223/2004 and 75/2005 Dt:20-6-2005-DB
- (xii) Shiek Mohamed Umar Sha @ Raju v. State CrI. O.P. Nos. 25088 and 25089/2003 Dt. 1-8-2003
- (xiii) Zulfigar Ali @ Appakutty v. State CrI. O.P. No. 580/2004 Dt. 8-1-2004

9. It is useful to refer a Constitutional Bench decision of the Supreme Court in P. Ramachandra Rao v. State of Karnataka, reported in 2002 SCC

830. After referring to all the earlier case laws, including the Supreme Court decisions cited by Mr. R. Sankarasubbu, Their Lordships have

concluded thus: (para 29)

29. For all the foregoing reasons, we are of the opinion that in Common Cause A Registered Society through its Director Vs. Union of India

(UOI) and Others, [as modified in Common Cause, A Registered Society Vs. Union of India (UOI) and Others, and Raj Deo Sharma Vs. The

State of Bihar, and Raj Deo Sharma Vs. The State of Bihar, the Court could not have prescribed periods of limitation beyond which the trial of a

criminal case or a criminal proceeding cannot continue and must mandatorily be

closed followed by an order acquitting or discharging the accused.

In conclusion we hold:

(1) The dictum in Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay case adequately take care of right to speedy trial. We uphold and reaffirm the said propositions.

(3) The guidelines laid down in A.R. Antulay case are not exhaustive but only illustrative. They are not intended to operate as hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II)

could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings

merely on account of lapse of time, as prescribed by the directions made in Common Cause case (I), Raj Deo Sharma case (I) and (II). At the

most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they

may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration

the several relevant factors as pointed out in Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., and decide whether the trial or

proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such timelimits cannot and will not by themselves

be treated by any court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and

acquit or discharge the accused.

(5) The criminal courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the Code of Criminal Procedure

to effectuate the right to speedy trial. A watchful and diligent trial Judge can

prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court u/s 482 Cr.P.C. and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary quantitatively and qualitatively by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated 19-9-2000 and 26-4-2001 in the above said terms.

It is clear from the principles laid down in the above decision that it is not permissible to prescribe any outer-limit for conclusion of criminal

proceedings. We have already demonstrated the number of persons involved and examined on the side of the prosecution case and it cannot be

compared with other ordinary cases where only few witnesses are examined on the side of the prosecution. In the light of the principles laid down

in the above case and of the fact that the prosecution has already completed the examination of their witnesses and posted for questioning, we are

not inclined to accept the request of the petitioner in this petition. However, it is made clear that if the trial is further delayed due to the inaction or

attitude on the part of the prosecution, the person aggrieved can move the appropriate Court for bail. With the above observation, the Habeas

Corpus Petition is dismissed.