

(2005) 04 MAD CK 0053

In the Madras High Court

Case No : Criminal Appeal No's. 1909 of 2003 and 335, 344, 347, 348, 829, 1292 and 1388 of 2004

Palani @ Manickam

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Arms Act, 1959 — Section 25(1B)
Criminal Procedure Code, 1973 (CrPC) — Section 437, 439
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 307, 333
Prevention of Terrorism Act, 2002 — Section 22(1), 3(2), 3(3), 3(5), 4

Citation : (2006) 1 LW(Cri) 41

Hon'ble Judges : M. Karpagavinayagam, J;C. Nagappan, J

Bench : Division Bench

Advocate : N.R. Elango, in in Criminal Appeal No. 1909 of 2003 and R. Sankarasubbu, in Criminal Appeal Nos. 335, 344, 347, 348, 829, 1292 and 1388 of 2004, for the Appellant; K. Doraisamy, Public Prosecutor assisted by K. Jayakumar, APP, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam,J.

1. Aggrieved by the orders, rejecting the bail applications filed by different accused in different applications, these appeals have been filed by the appellants/accused.

2. Appellants are the accused in Special C.C.No.5 of 2003, taken on file by the Special Court, Poonamallee, for the offences under Sections 148,

333, 307, 333 read with 149 IPC and 120B read with 3(2)(b), 3(3), 3(5), 4(b) and 22(1) of the Prevention Of Terrorism Act,2002, and Section

25(1B)(a) of the Arms Act,1959.

3. According to the prosecution, on 23.11.2002, on information from Grade-I Police Constable, District Special Branch, Dharmapuri District, that

ten accused persons were doing Karate practice in a mango grove at Salaijogipatti Village, the Inspector of Police, heading a team of Naxalite

Special Duty Wing, Dharmapuri District, conducted a search in the said mango grove. However, it was noticed that the said gang already left. On

the same day, when he interrogated the accused Murugesan, it was disclosed that the said mango grove was leased out to one Gurusamy, who, in

turn, permitted the accused to do Karate training in the mango grove.

4. On 24.11.2002, the Inspector of Police, Naxalite Special Duty Wing, Dharmapuri District, conducted a search in the thatched hut, owned by

the said Gurusamy. From there, arms and explosive substances were seized. On the same day, Martyn Tamilselvan and Prabhakaran were

arrested and a case was registered in Crime No. 1004 of 2002.

5. On information that about 25 persons in a gang were moving suspiciously with a shoulder bag and fire arms near Kallur Village, the Inspector,

Naxalite Wing Team, went to the scene and found the accused moving with the bags. There was an encounter between the gang and the police. In

the said encounter, one Siva died on the spot and four police personnel, including the Inspector of Police, sustained bullet injuries. Only two

accused, namely, Mathaiyan and Suresh were arrested and the remaining accused ran away from the scene. Later, on the same day, two other

accused, namely, Raja and Kumar were arrested. For this incident also, a separate case was registered in Crime No.1005 of 2002. On the same

day evening, the police party, headed by Superintendent of Police, Dharmapuri District, searched for the accused. When the police saw the

extremists and asked them to surrender, they suddenly opened fire towards the police party and tried to escape. Then, the team surrounded them

and arrested 15 persons, including four women. For this incident, a separate case was registered in Crime No.1006 of 2002.

6. On 25.11.2002, on coming to know that some accused persons were carrying fire arms at Kurugapatti Village, the police rushed to the place.

On seeing the police party, the accused persons opened fire. In the encounter, three police personnel sustained grievous gunshot injuries. One

Balan, accused, also sustained injuries and he was arrested. The remaining

accused escaped. With reference to this incident, a separate case in Crime No.434 of 2002 was registered.

7. In all the cases, the Deputy Superintendent of Police, C.I.D. Branch, Coimbatore, took up investigation and filed charge sheet under Sections 148, 333, 307, 333 read with 149 IPC and 120B read with 3(2)(b), 3(3), 3(5), 4(b) and 22(1) of the Prevention Of Terrorism Act, 2002, and Section 25(1B)(a) of the Arms Act, 1959. Ultimately, the case was taken on file in Special C.C.No.5 of 2003.

8. The appellants earlier filed bail application before the Special Court in Criminal M.P.No.46 of 2003 and it was dismissed on 06.10.2003. After one year, again, the appellants filed bail application in Criminal M.P.No.103 of 2003 and the same was also dismissed on 06.02.2004. Hence, these appeals.

9. Various counsel for the appellants would raise several points relating to the merits of the case as well as the maintainability of the charge sheet, filed by the police as against all the accused under POTA.

10. The main objection raised by the learned Public Prosecutor is, that in view of serious allegations made against the police, that too for the offence under POTA, the appellants should not be released on bail and if they are released on bail, there is a likelihood of the appellants fleeing from custody and, ultimately, the progress of the trial would be affected.

11. On going through the records and on hearing the submissions made by the learned counsel for the parties, it would be better to avoid any discussion with reference to the maintainability of the main case, as it would amount to usurping the trial Court's power for dealing with the said question, after the trial has completed. But, it is to be noted that the appellants are in jail for more than two years.

12. As correctly pointed out by the learned counsel for the appellants, since the period of one year is completed, the bar u/s 49(6) of the POTA, 2002, restricting the bail, is lifted.

13. Admittedly, it is by way of exception to Section 49(7) of the POTA, the proviso is added, which means that after expiry of one year after detention of the accused for the offences under POTA, accused can be released on bail, after hearing the Public Prosecutor under ordinary law

and without applying the rigor of Section 49(7) of POTA. As such, after the period of one year is over, the Court has got discretion to consider

bail under ordinary law, under Sections 437 and 439 of Cr.P.C.

14. There is no dispute in the fact that all the appellants are in jail for more than two years. According to the learned Public Prosecutor, even under

ordinary law, the appellants may not be directed to be released on bail, in view of the fact that there are serious allegations against the appellants,

constituting very grave offences and, if the appellants are released on bail, they may not be available for trial.

15. As a matter of fact, after the appeals were taken up, several times the matter was adjourned, to enable the trial Court to frame charges. This

Court also suggested that after the charges are framed, interim bail could be considered, by imposing some stringent conditions, so that further fair

trial would be ensured. The learned Public Prosecutor requested this Court to adjourn the matter so as to see that the charges are framed.

Accordingly, learned counsel for the appellants were directed to instruct their clients to extend full cooperation, to enable the trial Court to frame

charges. From 16.11.2004, the matter was periodically adjourned to different dates and, ultimately, charges were framed in January, 2005.

Thereafter, when the matter was taken up, the learned Public Prosecutor would oppose the matter that the prosecution apprehends that if the

appellants are released on bail, they would flee from justice and they may not be available for trial.

16. It is contended by the learned counsel for the appellants that two other accused persons, who were similarly placed with that of the appellants,

were released on bail earlier and, as such, the appellants are also entitled for bail.

17. The said contention cannot be countenanced for the reason that one person was released since he was a juvenile and the other person was

released, as, at that stage, no case was registered under POTA against him. Under those circumstances, the objections raised by the learned

Public Prosecutor with regard to grant of bail to the appellants cannot be said to be unreasonable. But, this Court is constrained to consider the

grant of bail to the women accused alone, mainly on the ground that exception has been given for the women accused as per Section 437 Cr.P.C.

proviso. It is provided in the proviso that the Court may direct a person referred

to in clause (i) or clause (ii) be released on bail, if such a person is under the age of sixteen years or is a woman or is sick or infirm.

18. As indicated above, one another juvenile accused was already released on bail and that concession could be given to the women accused also.

Though it is stated that the appellants have no roots in the society, the appeals filed by the women accused would indicate that they have got a permanent address.

19. In all the eight appeals, four appellants in Crl. Appeal No.335 of 2004, namely, Reeta Mary @ Uma (A-22), Sathia Mary @ Padma (A-23),

Jayanthi Mary @ Jayal Mary (A-24) and Sathia @ Uma @ Deivanai @ Yasodha (A-29); third appellant in Crl. Appeal No.1292 of 2004,

namely, Amalorpavam @ Anandhi (A-25) and sixth appellant in Crl. Appeal No.1388 of 2004, namely, Vijaya @ Ramani are the women

accused.

20. According to Reeta Mary (A-22), first appellant in Crl. Appeal No.335 of 2004, she is aged about 20 years and was arrested on 24.11.2002.

She studied up to S.S.L.C. Her father and elder brother are tree climbers and her younger brother is working in a steel company. It is stated that

no recovery is made from her. She is in jail from 24.11.2002 i.e., for nearly 2 1/2 years.

21. According to Sathia Mary (A-23), second appellant in Crl. Appeal No.335 of 2004, she is aged about 27 years and was arrested on

24.11.2002. She studied I.T.I. Draftsmanship and her father is an artist. She is in jail from 24.11.2002 i.e., for nearly 2 1/2 years.

22. It is reported that Sathia Mary, on one occasion, swooned in the Court Hall and was taken to hospital. When this was brought to the notice of

this Court, this Court directed the Designated Court to verify with reference to her health condition and pass suitable orders to give further

treatment to her. According to her, she has got some roots in the society.

23. According to Jayanthi Mary (A-24), third appellant in Crl. Appeal No.335 of 2004, she is aged about 24 years and was arrested on

24.11.2002. She studied +2 and passed Nursing Diploma Course. Her sister is working as a Lab Technician in a Matriculation School and

another sister is working as a Computer Operator in Madurai. Her mother is also working as an Office Assistant in a Matriculation School at

Madurai. She is in jail from 24.11.2002 i.e., for nearly 2 1/2 years.

24. According to Sathia (A-29), fourth appellant in Crl.Appeal No.335 of 2004, she is aged about 25 years and was arrested on 20.02.2003.

She is an agricultural coolie. Her brother and father are also agricultural coolies. Her brother is now studying +2 and she has got roots in the

society. She is in jail from 20.02.2003 i.e., for nearly 2 years and 2 months.

25. According to Amalorpavam @ Anandhi (A-25), third appellant in Crl.Appeal No.1292 of 2004, she is aged about 36 years and was arrested

on 24.11.2002. She is an agriculturist and her father is no more. Her two brothers are small scale businessmen. She is in jail from 24.11.2002 i.e.,

for nearly 2 1/2 years.

26. According to Vijaya @ Ramani (A-28), sixth appellant in Crl.Appeal No.1388 of 2004, she is aged about 23 years and was arrested on

26.11.2002. She hails from an agricultural family and her father is no more. Her mother is working as a coolie. She is in jail from 26.11.2002 i.e.,

for nearly 2 1/2 years. She has got permanent address.

27. The respective counsel for all these women appellants/accused would state that they are prepared to abide by any conditions that may be

imposed by this Court while granting bail and undertake to appear before the Designated Court and fully cooperate with the trial. Admittedly, the

persons, who were released on bail earlier, have been appearing for trial regularly.

28. In view of the above situation, there is no reason to hold that these women accused will flee from justice. Therefore, the women accused alone

are ordered to be released on bail, on each of them executing a personal bond for a sum of Rs.1,000/- (Rupees One Thousand only) with two

sureties for a like sum to the satisfaction of the Designated Court, with the condition to reside at Poonamallee and report to the Designated Court

daily at 10.30 a.m. on all working days until further orders. In regard to the other accused, we feel, that they are not entitled to bail and, as such,

their appeals are dismissed. No costs.

29. If there is any violation of the condition imposed by this Court, it is open for the respondent to move this Court by filing necessary application,

for cancellation of the bail granted to the women accused.

As directed by this Court, the address particulars of the women accused have been given; the copy of which has been furnished to the learned Public Prosecutor. After receipt of the copy, the learned Public Prosecutor requests this Court to give a direction to the designated Court to continue the trial on the day-to-day basis and complete the same within a period of six months from today, and accordingly directed.