

(2014) 01 MAD CK 0166
In the Madras High Court
Case No : Criminal Appeal No. 758 of 2013

S. Ragini

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 174
Explosive Substances Act, 1908 — Section 3 4 5
Penal Code, 1860 (IPC) — Section 120(B) 124(a) 147 148 307
Prevention of Terrorism Act, 2002 — Section 18 3(1)(b) 34 60

Citation : (2014) 1 LW(Cri) 522 : (2014) 1 MLJ(Cri) 129

Hon'ble Judges : S. Rajeswaran, J; P.N. Prakash, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; Shanmugavelayutham, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Prakash, J.—This is an appeal u/s 34 of the Prevention of Terrorism Act, 2002 (in short "POTA"), against the order dated 29.10.2013 in CrI.M.P. No. 216 of 2013 in Spl.C.C. No. 1 of 2009, passed by the Special Court for POTA Cases, Poonamallee, Chennai, whereby bail was denied to the appellant/accused herein. It is the specific case of the appellant that she is one S. Ragini, wife of Duraisingavelu and not Bharathi, who has been arrayed as Accused No. 32 in Spl.C.C. No. 1 of 2009 (originally Spl.C.C. No. 5 of 2003 and later, split up as against Bharathi, who was absconding and was re-numbered as Spl.C.C. No. 1 of 2009).

2. Mr. R. Sankarasubbu, learned counsel appearing for the appellant, would contend that the husband of the appellant, Duraisingavelu, was earlier arrested by the police under POTA and he along with other accused were granted bail by this Court on various dates and therefore, continued incarceration of this appellant is violative of Article 21 of the Constitution of India. Learned counsel

also submitted that the case of the appellant will not come u/s 3(1)(b) of the POTA, because membership simpliciter without anything more, cannot attract the penal provision under the Act, in the light of the fundamental rights to form an association guaranteed by the Constitution of India. He also placed on the lines, several judgments of the Hon"ble Apex Court in support of his contention.

3. Per contra, Mr. Shanmugavelayutham, learned Public Prosecutor appearing on behalf of the State, filed a detailed objection statement and additional counter setting out the facts leading to the arrest of the appellant and strongly opposed the grant of bail to the appellant, on the ground that she has been actively involved in a proscribed organisation and further, she has been absconding since 2002 and was arrested only on 25.06.2013, in connection with Dharmapuri Town police station Crime No. 383 of 2013.

4. For better appreciation of the facts in this case, we are extracting the observations recorded by the learned Special Judge in paragraph 11 of the impugned order, which read thus:

11. The cursory perusal of the case records reveals as follows:

(i) On 24.11.2002 based on a secret information received by the Naxalite Special Duty Wing, Dharmapuri, a search was conducted in the house of Guruswamy S/o. Raj residing at Anna Nagar, Uthangarai, along with Uthangarai Police. At that time, in that house, Country gun, Air gun, Gelatine, Safety fuse and band books relating to RYL and medicines were found. At that time, Guruswamy's son Prabakaran and Martin Tamil Selvan of Madurai were in that house. When they were asked about those properties, they said that in the mango grove of one Murugesan S/o. Duraisamy of Salaijogipatti village near Samalpatti, RYL, RSU, TNPK, UUM outfits have proposed to associate together to fight against the Government and for that they are intended to take weapon training and to take for that purpose they have kept there the above said properties. Hence, the above persons were arrested and a case in Uthangarai P.S. Crime No. 1004/2002 u/s. 120(B) r/w 9(B)(1)(b) I.E. Act and Section 25(1)(a) of I.A. Act and Sections 4 and 5 of Explosive Substance Act was registered and investigated.

(ii) When police searched at the mango grove of the said Murugesan, having received the information that Martin Tamilselvan and Prabakaran have been arrested, about 25 naxalites who were there had escaped in three teams taking their belongings. Upon information received by police, that one of the above teams is going near Chinna Kanagampatti village, at 1.45 p.m. the above naxalites were rounded by the police. At that time there was exchange of fire between the naxalites and the police and in that, Siva @ Parthiban died. Police men also got wounded. One Kumar @ Palanisamy, Raja, S/o. Mariappan were arrested at that spot itself. Suresh, Durai, Ramachandran, Navin Prasad, Palani @ Manickam, Madhyian were absconded. Country guns, bombs, pipe bombs were recovered from the spot. Regarding this, a case in Uthangarai P.S. Crime No. 1005/2002 u/s. 120(B), 147, 148, 332, 307 IPC r/w 25(1)(A) I.A. Act, Sections 4

and 5 of Explosive Substances Act and Section 174 Cr.P.C. was registered. Kumar, Raja, Palani, Madhiyan, Suresh, Durai and Ramachandran were arrested later. The absconding accused Navin @ Prasad was shot dead in a fight between the naxals and the police on 19.4.2008 at Kodaikanal hill.

(iii) On information received by the police that another team of naxalites who escaped from the mango grove in Salajohipatti at 5.30 p.m. on 24.11.2002 is going near Onnakkarai forest within the range of Uthangarai Police Station, they were rounded by the police and Krishnan, Ravi, Sathishkumar, Sakthivel, Sekar, Muthu, Thangapandian, Ananda Kumar @ Bagathsingh, Manivasagam, Vinayagam, Raja, Reeta Mary, Sathya Mari @ Padma, Reena Joyce Mari @ Jayanthi Mary, Amalorpavam @ Ananthi were arrested and books of Naxals Movement, identity card and gun were recovered from them. Regarding this, a case in Uthangarai P.S. Crime No. 1006/2002 u/s. 147, 148, 307, 120(B) IPC r/w 25(1)(A) I.A. Act was registered and investigated.

(iv) On information that the another team of Naxalites who escaped from Salijohipatti mango grove was in a mango grove near Kurugappaty within the range of Kallavi Police Station, they were surrounded by the police. During this time, the naxalites exchanged fire and police also fired in which one Balan got injured in his head and was caught. Other naxalites Duraisingavel, Vijaya @ Ramani, Sundarmurthy, Chandra, Yasodha and Bharathi were escaped. Later, Durainsingavelu and Ramani were arrested at Olapatti Koot Road. Regarding this incident, a case in Kallavi P.S. Crime No. 434/2002 u/s. 147, 148, 332 and 307 IPC r/w 25(1)(A) I.A. Act and Sections 3 and 4 of Explosive Substances Act was registered. Thereafter out of the absconding accused, Sundaramurthy and Yasoda were arrested.

(v) All the above cases were transferred to Q Branch CID since they relate to naxal organisations and Mr. John Chelliya, Dy. Superintendent of Police, Q Branch C.I.D., Coimbatore, was appointed as Investigating Officer and further investigation was done. The said cases then were changed as POTA cases. Since all those cases relate to single incident, they were clubbed together and a charge sheet against those 35 persons was filed before this Court on 19.5.2003 which is pending in this court as Special C.C. No. 5/2003.

(vi) With respect to the absconding Accused A 31 Chandra and A 32 Bharathi, the said case was split up and was assigned as Special C.C. No. 1/2009 (this case) which is also pending. N.B.Ws. against the said two accused were pending. Bharathi has got another case in Kundrathur Police Station Crime No. 1397/2012 u/s. 17(1) CLA Act.

(vii) On 14.6.2013 near a railway bridge on the western side of Kadagathur village within the range of Dharmapuri Town Police Station, the accused Duraisingavelu (A25) and his wife Bharathi @ Ragini, who were having books banned by Government and tried to canvass members for Makkal Jananayaga Kudiarasu and planned to fight against the Government, were arrested by Mr.

Hayath, Inspector of Police, Naxal Special Wing, Dharmapuri and his police party at 1.00 p.m. The books were seized under mahazar and they were handed over to Mr. Sampathkumar, Inspector of Police, Dharmapuri Police Station along with Special Report at 4 p.m. Then, a case in Dharmapuri P.S. Crime No. 383/2013 u/s. 124(a), 353 IPC r/w 7(1)(a) CLA Act was registered. When the accused were examined in the presence of witnesses, they stated that they were surrounded by police when they tried to take weapon training near Uthangarai in 2002 and in that incident Duraisingavel was arrested and Bharati @ Ragini got escaped and was absconding. Then they were produced before Judicial Magistrate No. 1, Dharmapuri on 15.6.2013 and were remanding to judicial custody.

5. From the above facts recorded by the trial Court and from the charge sheet filed in this case, it appears that 32 accused were charge-sheeted by the respondent police before the Special Court for POTA cases, Poonamallee, on 19.05.2003. One Bharathi is shown as 32nd accused and she is shown to be absconding. In the individual incidents narrated in the charge sheet, Bharathi/A-32 is shown to have involved in some of the incidents along with her husband, Duraisingavelu. As Bharathi was absconding for a long time, the case was split up as against her and was numbered as C.C. No. 1 of 2009.

6. In the meantime, it appears that a Review Committee u/s 60 of the POTA was constituted by the Central Government to review the various cases registered under the Act. The Review Committee went through the case records and found that there is no material as against one person alone and he was directed to be released from the prosecution. Aggrieved by that, it appears that the State has approached this Court challenging the said order of the Review Committee and the case stands there.

7. It is the case of the prosecution that the appellant herein belongs to RYL, which is a front organisation of the Communist Party of India (Marxist Leninist). It may be relevant to state here that the Act itself has declared certain organisations enumerated in the schedule to the Act as Terrorist Organisations u/s 18 of the Act. In the schedule, Entry No. 24 reads thus:

24. Communist Party of India (Marxist Leninist)-People's war, all its formations and Front organisations.

Therefore, the contention of the prosecution is that the appellant herein is an active member of a terrorist organisation and that she has been absconding all along and therefore, now that she has been arrested by the police, she cannot take advantage of her own wrong.

8. It is true that a Division Bench of this Court has released several accused involved in this case on bail. A perusal of those bail orders would show that the accused involved therein were not in abscondence and they were released on bail in 2005 and in 2012. Therefore, this appellant cannot claim any parity with them, because she was absconding all along and was apprehended by the police only on 25.06.2013.

9. The next question to be decided is whether the appellant herein is one Bharathi or not. It is strenuously contended by the learned counsel for the appellant that the appellant herein is Ragini and not Bharathi and therefore, she should be released on bail.

9.1. The prosecution has filed prima facie materials to show that Ragini and Bharathi are one and the same person. The trial Court, which has seized of the case, has also rejected the argument that Ragini and Bharathi are two different persons. We, sitting in appeal, do not want to give any finding on this aspect, for that would cause undue prejudice to both the parties. Whether Bharathi and Ragini are one and the same person is a question of fact and has to be determined only in the course of trial, when the witnesses, who had seen the appellant involving herself in the overt act alleged against her, identify her whilst in the witness box. This stage is too premature to decide on the question of identity.

9.2. It is alleged by the prosecution that Bharathi and others had thrown bombs at the police party during the course of certain individual incidents, which are detailed in the charge sheet. We wish to extract charge No. 3, which reads as follows:

CHARGE No. 3

Whereas on 24.11.2002, 11.30 A.M. at Chinnakanakkampatty village, Uthangarai Taluk, Dharmapuri District, Accused persons namely A4-Suresh, A5-Madhaiyan, A6-Kumar @ Venkatesan @ Palanisamy, A7-Raja, A8-Durai, A9-Palani @ Manickam @ Manimaran @ Rajendran @ Manivannan, A10-Boothipatti Ramachandran, A11-Naveen @ Prasanth @ Prasath, A12-Krishnan, A13-Ravi, A14-Sathish Kumar, A15-Sakthivel, A16-Bhaskaran @ Sekhar, A17-Muthu @ Patchamuthu, A18-Thangapandiyan, A19-Manivasagam @ Mani, A20-Sathiya Mary @ Padma, A24-Joyce Mary @ Jayanthi Mary @ Reena Joyce Mary @ Madurai Mary, A25-Amalorpavam @ Ananthi, A26-Balan @ Jayabalan, A27-Duraisingavel @ Velu @ Durai @ Maran @ Ramesh Kumar @ Nathan @ Seeralan, A28-Jothi @ Vijaya @ Ramani, A29-Sathya @ Uma @ Deivani @ Yasodha, A30-Sundaramoorthy, A31-Chandra and A32-Bharathi, formed themselves into an unlawful assembly and in prosecution of their common object of deterring the police personnel and with intent to prevent the police personnel from discharging their duty as Public servants, used criminal force against the police team and indulged in rioting armed with fire arms and explosive substances which are likely to cause death, thereby above named Accused persons A4 to A32 appear to have committed offence u/s 148 of IPC and rendered themselves liable for punishment.

9.4. In the course of trial, it will be possible for the witnesses to identify whether the person standing in the dock (be it Bharathi or Ragini) was the person whom they saw at the relevant point of time indulging in the criminal act attributed to her. We cannot close our eyes to the fact that hard-core criminals operate

pseudonymously with different names and identities.

10. We also find from the trial Court records a disturbing fact. It appears that after the arrest of the appellant in this case, an application for police custody was filed by the prosecution and the same has been dismissed by the trial Court. One reason given by the trial Court in the order dated 11.07.2013 in CrI.M.P. No. 221 of 2013 is,

17. In the present case also, this Court has gone through the case records. It found that the charge sheet is filed on 19.5.2003. Further, more than ten years later the police is seeking police custody of the accused is not entitled.

The reason given by the trial Court is not sustainable, because the power to take an accused into police custody, even after the filing of charge sheet, has been recognised by the Hon''ble Supreme Court in State through C.B.I. Vs. Dawood Ibrahim Kaskar and others, , which has been subsequently relied upon by the Apex Court in Dinesh Dalmia Vs. C.B.I., .

11. The learned counsel appearing for the appellant has relied upon the following judgments: A. State of Kerala Vs. Raneef, .

The facts in this case is distinguishable, as could be seen from paragraph 10 of the judgment, that there is no evidence to show that PFI is a terrorist organisation. On that ground, the appellant therein was granted bail by the High Court and the appeal by the State of Kerala was dismissed by the Apex Court.

B. Arup Bhuyan Vs. State of Assam,

In this case, the appeal was filed against the judgment of conviction and sentence. The Hon''ble Supreme Court held that mere confession to the police could not be sufficient to prove the case against the appellant therein, whereas in the case in hand, the appellant is seeking bail, where the parameters are different.

C. Sri Indra Das Vs. State of Assam,

This is also a case against conviction and sentence by the trial Court, based on the confession of the accused. Following the ratio laid down in Arup Bhuyan Vs. State of Assam, , the Supreme Court was pleased to acquit the accused.

D. Nimeon Sangma and Others Vs. Home Secretary, Government of Meghalaya and Others, .

This was a case where the Supreme Court was pleased to release the under trial prisoners, who were in custody for over six months and whose trials were not commenced or against whom charge sheet has not been filed. In the case on hand, the appellant herein was arrested on 25.06.2013 and not even six months had lapsed after her arrest. Moreover the case before the Supreme Court was IPC offences and not under any special legislature like POTA.

E. Elango v. The State of Tamil Nadu (1986 L.W. (Cri.) 184)

This is a case arising under the National Security Act, which is a preventive detention law. But, whereas, the appellant herein is involved in a punitive detention law.

For the foregoing reasons, we find that there is no merit in this appeal and accordingly, the Criminal Appeal is dismissed.