

(2012) 03 MAD CK 0108

In the Madras High Court

Case No : Criminal Appeal No. 74 of 2012

Sathya @ Uma @ Deivanai @ Yasodha

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 309, 317
Penal Code, 1860 (IPC) — Section 120B, 148(2), 149, 307, 333
Prevention of Terrorism Act, 2002 — Section 22(1), 22(5), 3(2), 3(5)

Citation : (2012) 03 MAD CK 0108

Hon'ble Judges : K. Mohan Ram, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : R. Sankara Subbu, for the Appellant; P. Venkata Subramanian Spl. P.P for POTA Cases, for the Respondent

Final Decision : Allowed

Judgement

G.M. Akbar Ali, J.—The petitioner is an accused stands charge sheeted for the offences u/s 3(5) of POTA 120(B) IPC r/w 3(2) of POTA 148 IPC (2), 333 IPC r/w 149 IPC, 307 IPC r/w 149 IPC, 22(1)(a) r/w 22(5) of POTA, 387 IPC, 353 r/w 149 IPC. The "Q" Branch CID of Dharmapuri found the petitioner along with 32 others belonging to a Naxalite group, a banned organisation committed various offences including the offences coming under Prevention of Terrorism Act (POTA Act) and charges were framed against 27 accused pending in CC No. 5 of 2003.

2. The petitioner was released on bail on 7.5.2005 and she was attending the Court regularly. She was absent from 23.5.2008 to 18.6.2009 and petition under Sec.317 Cr.P.C was filed and allowed. However, NBW was issued on 8.7.2009 and only on 30.4.2011 she was arrested and remanded to judicial custody and the case is pending in Spl.C.C. No. 5/2003 before the Sessions Court for Trial of Bomb Blast and POTA cases, Chennai at Poonamallee.

3. She filed a bail application before the Special Court in CrI. MP No. 200 of 2011.

The bail application was strenuously opposed by the respondent. On consideration of the materials on record, the Special Court found that the petitioner was absconding for three years and was also stated to be married to a person belonging to State of Bihar and therefore, she may abscond again and protract the proceedings. Therefore the application was dismissed by its order dated 3.1.2012. Aggrieved by the order, the petitioner has filed the present appeal on various grounds.

4. On notice, the respondent filed objections inter-alia stating that the petitioner was arrested after a period of three years of absconding, she has no permanent residence, she has married a person who belongs to State of Bihar. There are two other women accused who are absconding and therefore, the petitioner will also abscond and protract the proceedings.

5. On such objection, the petitioner filed an affidavit stating that she was regularly attending the court from 28.4.2005 to 8.7.2009. Due to poverty, she could not survive in her village and some middleman prevailed over her and she was taken to a stone quarry as a labour and later she came to know that she was sold as a bonded labour.

6. It is further stated that due to close intimacy of a person who was also working in the quarry she gave birth to a child and she was rescued by the police on 29.4.2011 and she was remanded for judicial custody without any reason.

7. Supporting the case of the petitioner, Mr. R. Sankara Subbu, the learned counsel for the petitioner submitted that the petitioner was in jail from 20.2.2003 till 6.5.2005 and from 6.5.2005, she was regularly attending the court till 8.7.2009 for four years. She was sold as a bonded labour and could not attend the court and when she was rescued she was not given an opportunity to explain the absence but was again remanded to judicial custody without any reason and from 29.4.2011 she is again in detention which is illegal.

8. The learned counsel pointed out the fundamental right guaranteed under Art.21 of the Constitution of India is affected. The execution of the warrant will not affect the earlier bail granted to the accused as the same has not been cancelled by the competent court. The learned counsel relied on the following case laws: 1996 SCC CrI 511 (Reghubir Singh and Others Vs State of Bihar) 2009 (2) SCC (CrI) 1047 (Mithabhai Pashabhai Patel and Others vs. State of Gujarat)

9. On the contrary, Mr. Venkatasubramanian, learned Special Public Prosecutor for POTA cases submitted that the petitioner was absconding for more than 3 years and on execution of Non-Bailable Warrant she was arrested and remanded to custody. She has no permanent residence and she is married to a person belonging to State of Bihar and there are all possibilities for her to abscond again. Therefore, bail should not be granted.

10. We have carefully considered the submissions on either side and perused the materials available on record.

11. Earlier, by an order dated 28.4.2005, this Court had considered a batch of criminal appeals in which, the bail was considered by a Division Bench of this Court. After considering that the charges are framed, the fact that the accused were in jail for more than 2 years and also considering particularly the case of the petitioner that she was an agricultural coolie and her brother and father were also agricultural coolies and her brother was studying and she has got roots in the society, this court had granted a conditional bail.

12. The only valid contention raised by the learned Special Public Prosecutor for POTA Case is that she was absconding from 2009 and only on execution of warrant she was produced on April 2011 and there is a chance for her to abscond again. Countering the statement, the learned counsel for the petitioner submitted that due to poverty, she was working as bonded labour in a stone quarry and she was rescued by the police.

13. The another contention raised by the learned Special Public Prosecutor is that she was married to a person who belongs to state of Bihar and she has no permanent residence in Tamil Nadu and that she may abscond.

14. Even according to the prosecution, she was arrested on 20.2.2003 and was in jail till she was granted bail on 20.4.2005 and was released on 7.5.2005. Admittedly, she was attending the Court regularly till 28.5.2008. But the petitioner in her affidavit would state that she was attending till 8.7.2009. From 8.7.2009 till she was produced on 29.4.2011, she is stated to be absconding.

15. To this, the petitioner has given an explanation that she was sold as a bonded labour in a stone quarry and she was rescued from the quarry. When such an affidavit is filed the respondent has not denied the above said facts. They have not even clarified whether she was rescued or arrested from the stone quarry.

16. When the petitioner has come forward with an acceptable explanation for her absence and when the same is not specifically denied by the respondent, it cannot be stated that she was wantonly absconding and thereby protracting the trial.

17. It is stated by the prosecution that she was married to a person belonging to the State of Bihar and she has no permanent residence in Tamil Nadu. It is also explained by the petitioner that when she was working in the stone quarry she had an intimacy with a person and begotten a child.

18. In the earlier bail order dated 20.4.2005, this Court had considered that the petitioner had relatives and that she has roots in the society and therefore granted bail to her. The apprehension of the prosecution that the petitioner may abscond since she was married to a person who belongs to state of Bihar is also not acceptable.

19. The judgment relied on by the learned counsel for the petitioner relates to the powers of Magistrate under Sec.167 (2) of Cr.P.C and Sec.309 of Cr.P.C which

is not relevant to the facts of the present case.

20. It is pertinent to point out that the bail was granted in the year 2005, the charges were already framed, but the trial has not commenced till today. Right to speedy trial has been declared as a fundamental right. The Apex court has held in a string of decisions that under Art.21 of the Constitution, no person shall be deprived of his life and liberty except according to procedures established by law and that speedy trial is a derivative right of the Article 21. The above principle has been time and again reiterated in, Pankaj Kumar vs. State of Maharashtra & Ors (2008 (16) SCC 117, Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and in several other decisions.

21. In the case of P. Ramachandra Rao Vs. State of Karnataka, , the Apex Court invoked the principle laid down in the earlier decisions and observed as follows

the width of vision cast on Article 21, so as to perceive its broad sweep and content, by seven-judge Bench of this court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , inspired a declaration of law made on February 12, 1979 in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , that Article 21 confers a fundamental right on every person not to be deprived of his life and liberty, except according to procedure established by law, that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just", and therefrom flows without doubt, the right to speedy trial. The Court said " No procedure which does not ensure a reasonably quick trial can be regarded as reasonable fair or just and it would fall foul of Article 21.

22. This court has already considered the conditions prevailing after filing of the charge sheet and enlarged the petitioner on bail in the year 2005. Unless it is shown that the petitioner had wantonly absconded thereby protracted the trial, the bail, as a right, cannot be denied.

23. Therefore, we are satisfied that the petitioner, if granted bail, will not abscond or protract the trial or tamper the witness, which is pending for almost a decade without any progress. In the result the appeal is allowed and the petitioner is ordered to be released on bail on her executing an own bond for a sum of Rs. 1,000/- (Rupees one thousand only) to the satisfaction of the Designated Court, with a condition to report to the Designated Court at 10.30 a.m on the first working day of every month and also in all the hearing dates until further orders.