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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.7.2022

Delivered on : 15.7.2022

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal No.487 of 2022

Bava Bahrudeen @ Mannai Bava

Appellant

vs.

Union of India rep by
Inspector of Police,
National Investigation Agency,
Chennai.

Respondent

Criminal Appeal filed under Section 21(4) of National Investigation Agency Act, 2008 to set aside the order dated 13.4.2022 passed by the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee, Chennai 600 056 in CrI.M.P.No.109 of 2022 and the same was dismissed on 13.4.2022 in C.C.No.2 of 2021 (R.C.No.08/2021/NIA/DLI) of the National Investigation Agency and enlarge the appellant on bail.

For Appellant : Mr.Sricharan Rangarajan for
Mr.A.Rawther Naina Mohamed

For Respondent : Mr.R.Karthikeyan,
Special Public Prosecutor for NIA cases

JUDGMENT

WEB CO S.VAIDYANATHAN, J.
and
A.D.JAGADISH CHANDIRA, J.

The Appeal has been filed seeking to set aside the order dated 13.4.2022 passed by the learned Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial for Bomb Blast Cases) Poonamallee, Chennai 600 056 in CrI.M.P.No.109 of 2021 in C.C.No.2 of 2021 (R.C.No.08/2021/NIA/DLI) of the National Investigation Agency and enlarge the appellant on bail.

2. The appellant, who has been arrayed as A2 in R.C.No.8/2021/NIA/DLI, stands charged for the offences under Sections 120(B) read with 124(A), 153A, 153B, 505(1)(b), 505(1)(c), 505(2) of IPC and Section 13(1)(b) of Unlawful Activities Prevention Act, 1967 and arrested and remanded to judicial custody on 16.9.2021, has filed the bail application in Crime No.109 of 2022 before the Trial Court and it was dismissed on 13.4.2022. The present appeal has been filed seeking to set aside the order of dismissal and enlarge the appellant on bail.

3. Brief facts of the prosecution case:-

i) Originally a case in Crime No.971/2020 was registered by C1



Thideer Nagar L&O Police Station for offences punishable under Sections 153(A), 153(B,) 505(1)(b), 505(1)(c), 505(2) of IPC and Section 13(1)(b) of Unlawful Activities (Prevention) Act, 1967 based on the complaint of one M.Ravindran, Sub Inspector of Police given to Smt.Geethalakshmi, Inspector of Police on 1.12.2020 at 22.15 hours.

ii) The crux of the complaint is as under:-

The complainant M.Ravindran, Sub Inspector of Police is serving as such at C1 Thideer Nagar (L&O) Police Station. He is a regular user of social network. On 1.12.202 at about 20.30 hours, when he was browsing his Facebook, he came across postings related to Islamic rule over world i.e., Khalifa and its power. On further search in the web, he found that those posts were explaining the activities of Islam and he noticed a post which reads as under:-

"If we were to believe Allah as our ruler, Muhammad as our leader, Quran as our constitution, means fundamentalism then fundamentalist we are. Al Quran is being burnt. Prophet Mohammed is ridiculed. We are being killed like sheep without shepherd being killed by wolf. Muslim youths are found of western culture. One of the reason for these



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are because of not following the Tawheed Hakimiyaah, when Tawheed Hakimiyaah is upheld, the Muslims would get their lost pride, the west is determined that the Muslims should not attain it. Lot of Muslim intellectuals also are with them. Muslims couldn't complete the duty of Islam only by eliminating Pidayaa. Fake news such as Quran being burnt, Mohammed Nabi being ridiculed and the Islamic people were instigated against other religion people with hate and enmity because of that they are provoking riots against other religions."

The complainant also noticed another post containing hate messages against Hindus instigating Muslim people against Hindu people which reads as under:-

"If it is told that not to criticize Hindu religion, ask them to remove the caste system from Hindu religion. If it is not possible, then they must be sent to Islam. Expose their politics which calls them as Hindus and torture them by imposing taxes Ask them what are the good deeds done by Hindutva to Hindu people till



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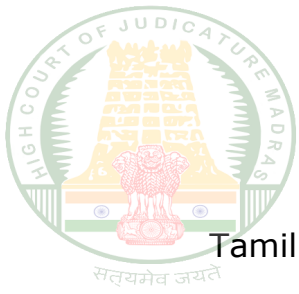
now. If he criticizes other religions ask about their economic policies. Tear their face mask. There are no economic policies like the policies of Islam. Ask them whether in any any of the epics the word HINDU has been mentioned..."

According to the complainant, the posts instigate Muslims to act against Hindus and create communal disharmony amongst different religions in a manner prejudicial to the maintenance of public order. The complainant checked the Face book ID of that person who posted the posts and came to know that the name of the person is Mohammed Iqbal from Kazimar Street.

iii) With the above contention, the complainant sought for initiating action against Mohammed Ibal by attaching the printouts of the screen shots of "Thoonga Vizhigal Rendu is in Kazimar Street".

iv) Based on the complaint, the then investigating officer had arrested A1 Mr.Mohammed Iqbal alias Senthilkumar, who had posted the above articles on 2.12.2020 and recorded his confession statement and on the strength of the said confession statement, has seized the mobile phone used by A1 for committing the said offence.

v) Later, based on the information given by the Government of



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Tamil Nadu and considering the gravity of the offence and other factors involved in the case, Government of India, Ministry of Home Affairs, CTCR Division, New Delhi had entrusted the investigation of the case to the present respondent. The National Investigation Agency had taken up the investigation, New Delhi took up the investigation of the case by re-registering the original case as RC-08/2021/NIA/DLI dated 26.4.2021. The respondent had collected evidence against A1 and charge sheet was filed before the Special Court on 28.5.2021 within the statutory time limit by invoking Section 120B read with 124A of IPC and Sections 38 and 39 of Unlawful Activities (Prevention) Act, 1967 and the case had been assigned C.C.No.2 of 2021.

vi) Subsequently, the respondent had filed a petition in Crl.M.P.No.212 of 2021 seeking to conduct further investigation and the same was allowed. Pursuant to the said order, the respondent had continued further investigation in this case and during the course of investigation, it came to light that the appellant/A2 is an active leader of Hizb-ut-Tahrir in Tamilnadu and he preached and incited the impressionable youth among Muslim community to establish an Islamic State Caliphate or Khalifah and implement a draft constitution written by Taqi al-Din al Nabhani based on Shariah and also explained the



method that Hizb-ut-Tahrir would use to get the help (Nusra) of Muslim country armies in establishing the Islamic State. In this regard, A2/Appellant had conducted closed door classes in various Districts of Tamil Nadu and also uploaded posts in his social media account with regard to recruit and to gain support from the like minded people. During the course of investigation it was found that one of the posts mentioned in the FIR which was shared by A1 is originally the post of the appellant/A2.

vii) On 16.9.2021, the Chief Investigating Officer conducted search at the residence of the appellant/A2 and seized many incriminating articles/documents which revealed the role of the accused in this case. The appellant/A2 was arrested on 16.9.2021 and he had disclosed the place where he had conducted the Hizb-ut-Tahrir classes and had also handed over the incriminating materials.

viii) On 17.9.2021, the data extraction from social media accounts used by the appellant/A2 was done in the presence of independent witnesses. The appellant/A2 was taken police custody from 18.10.2021 and 25.10.2021 and during the police custody, the appellant/A2 had revealed about his associates and foreign handlers to some extent and based on his disclosure, investigation about his



associates was conducted. Further, during the police custody, DVDs and other incriminating materials were recovered from the appellant/A2.

ix) Thereafter, the respondent had filed the supplementary charge sheet before the Special Court. The appellant had earlier applied for bail in CrI.M.P.No.421/2021 before the Special Court and it was dismissed on 28.12.2021. Subsequently, the appellant had moved the second application for bail in CrI.M.P.No.109 of 2022 which came to be dismissed on 13.4.2022 against which the present appeal has been filed.

4. Mr.Sricharan Rangarajan, learned counsel appearing for the appellant would submit his arguments as under:-

i) The appellant is an Islamic Scholar and other than preaching about his religion, he has not involved in any illegal or criminal activity and he has been falsely implicated in this case. The respondent, after completing the investigation, had filed the charge sheet in this case on 28.5.2021. Originally, the allegations were in respect of posts alleged to have been made by one Mohamed Iqbal, who is A1 in this case. Subsequently, the respondent had filed CrI.M.P.No.212 of 2021 to conduct further investigation and the same was allowed on 27.7.2021



and a supplementary final report has been filed on 18.3.2022

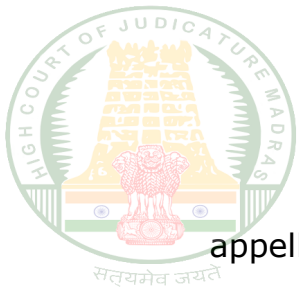
whereupon, the appellant has been implicated when the appellant's name was not mentioned in the charge sheet.

ii) The posts in question do not make out any of the offences alleged against the appellant.

iii) The Facebook posts in question nowhere advocates for the overthrow or subversion of the Government established by law through violent means.

iv) The appellant is said to be a member of Hizb-ut-Tahrir, which is neither a proscribed organization nor deemed as a Terrorist Organisation under Schedule IV of the Unlawful Activities Prevention Act and thereby the appellant cannot be prosecuted for the offence under Sections 120(B) read with 124(A), 153A, 153B, 295A, 505(1)(b), 505(1)(c), 505(2) of IPC and Section 13(1)(b) of Unlawful Activities Prevention Act, 1967.

v) Apart from the other offences, the appellant has been charge sheeted for the offence under Section 13(1)(b) of Unlawful Activities Prevention Act, 1967, which does not fall within the offences under Chapters IV and VI of Unlawful Activities Prevention Act, 1967 and thereby the rigors of Section 43D(5) will not be applicable to the



appellant.

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vi) Even assuming that if there is uploading of some posts, it does not make out an offence punishable under Section 124A IPC.

vii) The constitutionality of Section 124A IPC is now under challenge. The Hon'ble Supreme Court in **S.G.Vombatkere vs. Union of India** (2022) SCC OnLine SC 609 had directed that all pending cases be kept in abeyance.

viii) Since the offences alleged against the appellant do not fall within Chapter IV and VI of the Unlawful Activities Prevention Act, 1967, the Trial Court erred in dismissing the bail application invoking Section 43D(5) of Unlawful Activities Prevention Act, 1967.

ix) The investigation in this case been completed and final report has been filed and the case has been taken in C.C.No.2 of 2021 (R.C.No.08/2021/NIA/DLI). The appellant has strong roots in the society and he is prepared to furnish adequate security for his release on bail and undertakes to abide by any stringent conditions that may be imposed by this court.

x) There are 81 witnesses cited by the prosecution and thereby the possibility of trial being concluded within a reasonable time is very feeble. A1 in the case was already granted bail by the Special Court

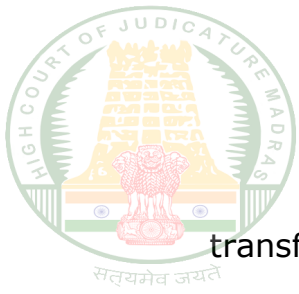


by order dated 3.9.2021 in CrI.M.P.No.222 of 2021 and he has passed away. The appellant has been suffering incarceration for more than 300 days and therefore, he craves indulgence of this court in granting personal liberty to the appellant during the period of trial.

5. The respondent has filed a detailed objections. Pointing out the counter allegations, Mr.R.Karthikeyan, learned Special Public Prosecutor, vehemently opposed for grant of bail to the appellant and submitted his arguments as under:-

i) Based on the complaint of one Sri.M.Ravindran, Sub Inspector of Police serving as such at C1 Thideer Nagar (L&O) Police Station, a case in Crime No.971 of 2020 was registered against one Mohamed Iqbal alias Senthilkumar for the offences punishable under Sections 153(A), 153(B,) 505(1)(b), 505(1)(c), 505(2) of IPC and Section 13(1)(b) of Unlawful Activities (Prevention) Act, 1967 alleging that he had posted in his Face book account some offensive and abusive material denigrating Hindus and instigating Muslims to act against Hindus and creating communal disharmony in a manner prejudicial to the maintenance of public order.

ii) The said Mohamed Iqbal alias Senthilkumar was arrested and thereafter, the case, which was registered by the State Police, was



transferred to National Investigation Agency taking into the seriousness and gravity of the case. The respondent had completed the investigation and filed the charge sheet before the Special Court on 28.5.2021 within the statutory time frame.

iii) Subsequently, the respondent had filed an Application in Crl.M.P.No.212 of 2021 seeking for further investigation and the same was allowed by the Special Court by its order dated 27.7.2021.

iv) During the further investigation, it was found that the appellant is an active leader of Hizb-ut-Thrir in Tamil Nadu and he was, under the guise of an Islamic Scholar, preaching and delivering speeches inciting impressionable youth among Muslim community to establish an Islamic State or Caliphate or Khalifah and implement the draft Constitution written by Taqi al-Din al-Nabhani based on Shariah. During the investigation, it was also found that one of the posts which was stated to be shared by A1 Mohamed Iqbal alias Senthilkumar is originally the post of the appellant. The Association in which the appellant is a member is banned in many countries.

v) During the search at the residence of the appellant on 16.9.2021, several incriminating and abusive and instigative materials were recovered. Based on the revelations made by the witnesses, A3,



one Ziyavudeen Baqavi was arrested on 24.2.2022. The investigation further revealed that the appellant and the other accused were influenced by extremist, radical and fundamentalist ideology of Hizb-ut-Tahrir, which has been banned in several countries. The appellant had engaged in radicalizing the members of Muslim community to establish an Islamic State.

vi) Further, during the course of investigation, a request was sent to the Face Book Inc. USA for the Face Book Profile IDs of Mannai Bava and mannaibavaHT and the reply received from the Face Book Inc. revealed that the mobile number 9095959275 used by the appellant was verified with the above said Face Book account.

vii) The appellant had been establishing study circles/cells for conducting closed door bayans in various Districts of Tamilnadu and Kerala. The respondent has collected sufficient materials and evidence to prove the criminal activities committed by the appellant and thus, the Special Court has rightly dismissed the bail application filed by the appellant which does not warrant any interference by this court.

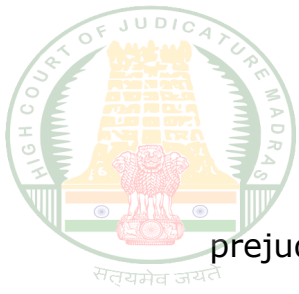
6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. The appellant has been arrested on 16.9.2021. Originally, the



case had been registered against A1, Mohamed Iqbal alias Senthilkumar for offences punishable under Sections 153(A), 153(B,) 505(1)(b), 505(1)(c), 505(2) of IPC and Section 13(1)(b) of Unlawful Activities (Prevention) Act, 1967 and charge sheet against A1 was filed as early as on 28.5.2021. Subsequently, based on inputs received, the respondent police had obtained orders for further investigation from the Special Court and during the further investigation, based on materials, had arrested the appellant on 16.9.2021, conducted search in the house of the appellant, recovered incriminating materials as against him.

8. On further investigation, the respondent has found that the appellant is the author of one of the alleged offending posts uploaded by A1 in his Face book page. It has also been confirmed by the communication received from Facebook Inc. USA. The further averment in the supplementary final report is that the appellant had uploaded various other offensive and abusive contents in Facebook and that he has also conducted Bayans in various places, preaching his ideology of Islamic State, Caliphate and Hizb-ut-Tahrir, thereby had acted in a manner denigrating Hindus and instigating Muslims to act against Hindus and creating communal disharmony in a manner



prejudicial to the maintenance of public order and attempted to excite disaffection towards the Government established by law.

9. Based on the above materials, the respondent had filed the supplementary final report on 18.3.2022 against the appellant for the offences punishable under Sections 120(B) read with 124(A), 153A, 153B, 505(1)(b), 505(1)(c), 505(2) of IPC and Section 13(1)(b) of Unlawful Activities Prevention Act, 1967.

10. Now coming to the contents in the alleged Facebook posts, a reading of the vernacular material reveals that it had propagated the ideology of the appellant and reprimanded Muslim Youths for not following Tawheed Hakimiyyah and criticized caste system prevailing in Hindu religion, but, nowhere it advocates for overthrow or subversion of the Government established by law through violent means and it also does not bring or attempt to bring into hatred or contempt and does not excite or attempt to excite disaffection towards the Government established by law attracting the offence punishable under Section 124A IPC.

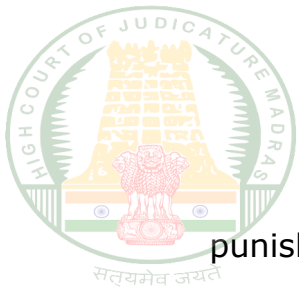
11. As rightly pointed out by the learned counsel for the appellant, the constitutionality of Section 124A IPC is now under challenge in view of the decision of the Apex Court in



S.G.Vombatkere vs. Union of India (2022) SCC OnLine SC 609.

WEB COPY 12. Though the List Witnesses have spoken about the appellant conducting Bayan and preaching of ideology of Islamic State, Caliphate and Hizb-ut-Tahrir and uploading of Face Book posts, they have not stated anything as if the appellant had indulged in any violent activity. Further, the organization to which the appellant belongs is also not a proscribed organization and it is also not deemed to be a "terrorist" organization as contemplated under Chapter VI of Unlawful Activities Prevention Act, 1967. It is relevant to note that Section 13(1)(b) of Unlawful Activities Prevention Act does not fall within Chapters IV or VI of that Act. Other than the allegations against the appellant for having posted abusive and inciting materials, the appellant is not said to have indulged in any act of violence. When Section 13 of the said Act also does not fall within Chapter IV or VI of that Act requiring invoking of Section 43D(5) and (6) of the Act while deciding the bail application, the Special Court had wrongly invoked Section 43D(5) and (6) of the Act for dismissing the bail application.

13. As far as the offences alleged against the appellant, though there is a mandatory provision for imposing a sentence of imprisonment, if found guilty, there is no prescription of minimum



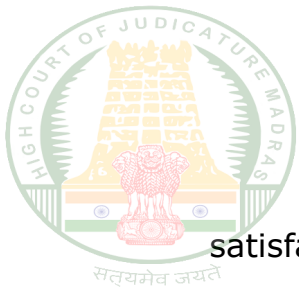
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punishment of imprisonment and the maximum punishment prescribed is imprisonment of 5 years or with fine or with both. The Association to which the appellant belongs is also not a proscribed organization or deemed to be a terrorist organization. As indicated above, Section 13 of Unlawful Activities Prevention Act, 1967 does not fall within Chapter IV or VI of the Act requiring recording of satisfaction as contemplated by sub-sections (5) and (6) of Section 43D of the Act. The appellant has been in custody for more than 300 days. Taking into consideration the stage of the case and the number of witnesses, there is also no likelihood of the trial being completed at the earliest. Therefore, this court is of the opinion that the appellant has made out a case for grant of bail.

14. In the result, the Criminal Appeal is allowed and the order dated 13.4.2022 passed by the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee, Chennai 600 056 in CrI.M.P.No.109 of 2022 in R.C.No.08/2021/NIA/DLI is set aside.

15. The appellant is ordered to be released on bail

a) on executing a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a likesum to the



satisfaction of the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Poonamallee, Chennai.

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Judge, Special Court may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the appellant shall report before the Special Court on every Monday at 10.30 a.m. and also on all the hearing dates.

(d) the appellant shall not leave the State of Tamil Nadu without prior permission from the Special Court.

(e) the appellant shall not commit any offences of similar nature;

(f) the appellant shall not abscond during trial;

(g) the appellant shall not tamper with evidence or witness during trial;

(h) on breach of any of the aforesaid conditions, the learned Judge, Special 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 Judge, Special Court himself as laid down by the Hon'ble Supreme Court in



P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

WEB COPY (i) if the appellant thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

16. Before parting with, we make it clear that the observations and findings recorded in this judgment are only for the limited purpose of considering the application for bail and the Special Court shall not be influenced by the same during the trial or while rendering its decision.

(S.V.N.,J.) (A.D.J.C.,J.)
15.7.2022.

Index: Yes/No.

Internet: Yes/No.

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To

1. Judge,
Special Court under the
National Investigation Agency Act, 2008
(Sessions Court for Exclusive Trial
of Bomb Blast Cases),
Poonamallee, Chennai 600 056
2. Inspector of Police,
National Investigation Agency,
Chennai.
3. The Superintendent,
Sub Jail,
Poonamallee.
4. The Public Prosecutor,
High Court, Madras.



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S.VAIDYANATHAN, J.
and
A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. JUDGMENT IN
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