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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.8.2022

Delivered on : 26.8.2022

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

Criminal Appeal No.597 of 2022

Sadam Hussain

Appellant

vs.

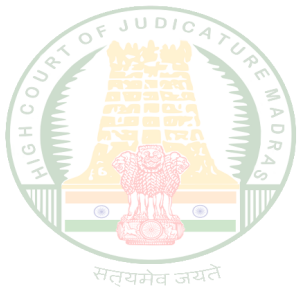
1. State rep. by  
Inspector of Police,  
Selvapuram Police Station (L&O),  
Coimbatore City,  
Coimbatore.  
(Crime No.85/2022).

2. The Inspector of Police,  
National Investigation Agency,  
Chennai.

Respondents

Criminal Appeal filed under Section 21(4) of National Investigation Agency Act, 2008 to set aside the judgment of the Vacation & Sessions Judge, Coimbatore made in CrI.M.P.No.2394 of 2022 dated 12.5.2022 in Cr.No.85 of 2022 and enlarge the appellant/appellant on bail.

For Appellant	: Mr.S.M.A.Jinnah
For R1	: Mr.Babu Muthumeeran, Additional Public Prosecutor
For R2	: Mr.R.Karthikeyan, Special Public Prosecutor for NIA

JUDGMENT

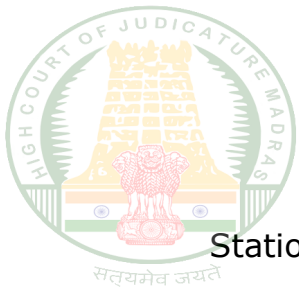
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S.VAIDYANATHAN, J.  
and  
A.D.JAGADISH CHANDIRA, J.

The Appeal has been filed seeking to set aside the judgment of the Vacation & Sessions Judge, Coimbatore made in CrI.M.P.No.2394 of 2022 dated 12.5.2022 in Cr.No.85 of 2022 and enlarge the appellant/appellant on bail.

2. The appellant, who was A1, later on alteration of FIR, re arrayed as A3 in a case registered by the respondent in Crime No.85/2022 for the alleged offences under section 153A(1)(b), 120(B) of IPC and Section 7(1)(a) of CLA Act 1932 @ Section 153A(1)(b), 120(B) of IPC and Section 7(1)(a) of CLA Act 1932 and section 25(1A) of Arms Act @ Section 153A(1)(b), 120(B) and 201 of IPC and Section 7(1)(a) of CLA Act, 1932 and section 25(1A) of Arms Act and Section 16 of Unlawful Activities (Prevention) Act, 1967. The appellant was arrested and remanded to judicial custody on 08.03.2022 and he is in incarceration for more than 100 days.

3. Brief facts of the case are as under:-

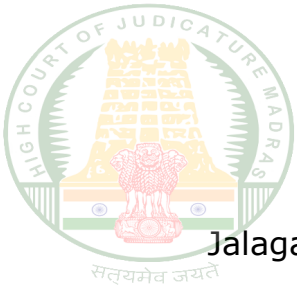
i) According to the prosecution, on 07.03.2022 at about 9 A.M when Tr. P.Silambarasan, Sub Inspector of Police of Selvapuram Police



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Station with his Head Constable 2395 Solomon was on rounds duty, he noticed the appellant moving in suspicious circumstances at the junction of Indra Nagar and Amul Nagar 1st Street and on enquiry, the Sub Inspector of Police found that the appellant was having his driving license with an address "Sadam Husain, S/o.Mohammed Iqbal, D.No.79/11A, Santhiyagappar Palayam, Kemps Town, Trichy".

ii) On further enquiry, the appellant confessed that he was deputed by one Bakrudeen, IMDA President of Chennai over phone to surveil the movements of one Kumaresan residing at Meenakumari Illam, Indira Nagar, Selvapuram as one Arunkumar, son of the said Kumaresan loved and married one Sahanaazmi, daughter of Rajamohammed and Noor Nisha of Tiruvarur, and the said Kumaresan had objected for his son Arunkumar to convert to Islam faith by relinquishing Hindu religion and therefore, if the said Kumaresan is killed, there would not be any difficulty for Arunkumar to embrace Islam faith and hence Noor Nisha had requested Bakrudeen to assist this matter and it would be a lesson in future to prevent others to marry Islam people and change them to Hinduism and the appellant had also confessed that he had come for this purpose with Bakrudeen, Imran and Mohammed Ali Jinna who were available on the way to

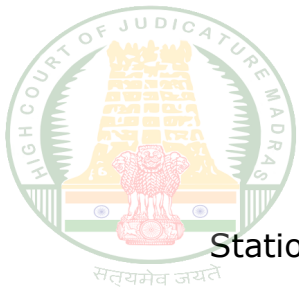


Jalagandeeswarar Temple at Puttuvikki Road to watch the residence of Kumaresan, and that they had committed a conspiracy and hatched a plan if the appellant would give a signal at the appropriate movement Bakrudeen, Imran and Mohammed Ali Jinna would join him to commit the murder of Kumaresan. During enquiry, the appellant had exhibited the photo of Kumaresan from his mobile phone, which was forwarded to him by Bakrudeen.

iii) Mr.Silambarasan, Sub Inspector of Police had produced the appellant, his driving licence and mobile phone to Mr.Natarajan, Sub Inspector of Police who registered the case in D-2 Selvapuram Police Station Cr.No.85/2022 U/s. U/s.153A(1) (b) and 120B IPC, Sec.7(1)(a) of Criminal Law Amendment Act, 1932.

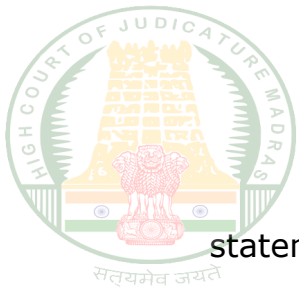
iv) Thiru.Saravanan, Inspector of Police, D-2 Selvapuram Police Station took up the investigation and inspected the said place where the appellant was first seen by Silambarasan, Sub Inspector of Police. He prepared an observation mahazar in the presence of witnesses Gobalakrishnan and Venkatarajan and rough sketch and recorded the statements of Sub Inspectors Silambarasan, Natarajan and Head Constable Solomon and mahazar witness Venkalarajan.

v) The Inspector arrested the appellant at 12.45 pm at the Police



Station and recorded his confession statement in the presence of witnesses Ashokkumar, Village Administrative Officer and Babu, Village Assistant of Kumarapalayam Village. The appellant had stated in his confession that the said three of his associates Bakrudeen, Imrankhan and Mohammed Ali Jinna would be available on the way to Jalagandeeswarar Temple at Puttuvikki Road and that he would point out them if he was taken over there. Thereupon, the appellant took the Inspector and party to the said place and the Inspector arrested the said Bakrudeen, Imrankhan and Mohammed Ali Jinna at 2.15 P.M. The Inspector of Police had examined and recorded the confession statement of Bakrudeen and on his confession and production from a nearby thorny bush in a concealed manner, the Inspector of Police seized 3 long sized bill hooks and the mobile phone of Bakrudeen under a recovery mahazar attested by the said witnesses Ashokkumar and Babu.

vi) The appellant further mentioned in his confession statement that their another associate by name Ajay would be waiting at Ukkadam Bus Stand and thereby took the Inspector of Police and party to Ukkadam Bus Stand and pointed out the said Ajay. The Inspector of Police had arrested the said Ajay and recorded his confession



statement in the presence of the said witnesses Ashokkumar and Babu. The said Ajay, in his confession statement, had stated that he was called as Ajay by his associates, but his original name was Ramveer. It was disclosed in the confession statement that Bakrudeen and Ajay would arrange for a firearm and all of them would escape to Uttarpradesh, the State of Ajay after the execution of their plan.

vii) On the basis of the recovery of 3 long sized bill hooks from Bakrudeen, Imrankhan and Mohammed Ali Jinna, the Inspector of Police had altered the offence by adding Sec.25(1A) of the Arms Act on the same day. All the said five accused were produced before Judicial Magistrate No.V, Coimbatore and they were remanded to judicial custody.

viii) During further investigation, the Inspector arrested Noor Nisha, wife of Rajmohammed at Koothanallur in Tiruvarur District on 12.04.2022, examined and recorded her confession statement and also seized her mobile phone under a recovery mahazar in the presence of witnesses Sub Inspector of Police, Maruthampal and Women Head Constable 2608, Shoba and got her remanded to judicial custody.

ix) On 20.04.2022, the Inspector of Police added the Penal



provisions of Sec.16 for contravention of Sec.15 and 18 of the Unlawful Activities (Prevention) Act, 1967 and Sec. 201 IPC and further investigation was taken up by the Assistant Commissioner of Police, Kuniyamuthur Range, Coimbatore City as the provisions of the Unlawful Activities (Prevention) Act were invoked.

xi) While so, the appellant filed a bail Application in Crl.M.P.No.1299 of 2022 and it was dismissed by the Principal District and Sessions Judge, Coimbatore on 23.03.2022. The appellant had filed the second bail petition before the same Court in Crl.M.P.No.2129 of 2022 and it was also dismissed by the same court on 27.04.2022. He had filed his third bail petition in Crl.M.P.No.2394 of 2022 and it was also dismissed by the Vacation and Sessions Judge, Coimbatore on 12.05.2022 and hence, the appellant has now filed the present Crl.A.No.597 of 2022 to set aside the said Order of the Vacation and Sessions Judge, Coimbatore in Crl.M.P.No.2394 of 2022 dated 12.05.2022.

4. The crux of the submissions made by the learned counsel appearing for the appellant Mr.S.M.A.Jinnah are as under:-

i) The appellant is working at his father's grocery shop and



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voluntarily involved him in a Social services through one whatsapp group namely "Indian Muslim Development Association" in Trichy on the love over the society and posted all his services at his Facebook pages. In this regard, the appellant had received a lot of threat in respect to his social service under the by forming an Association called "Indian Muslim Development Association", particularly from the police department.

ii) The police namely Suresh working at Trichy Intelligence came to the appellant's Grocery shop and threatened him to stop his social services and when the same was not followed by the appellant, they got personal vengeance against the appellant.

iii) While so, on 04.03.2022 at about 06.00 pm, the appellant was called by the said Suresh to the Commissioner office without giving any summon. When the same was questioned by the appellant's father, they replied as if it is just for an enquiry, however, the appellant was detained in an illegal custody and brutally harassed by the police officials and his signatures were obtained in empty papers and subsequently, he was handed over to the respondent police and a case was falsely foisted by the respondent police against the appellant.

iv) In this regard, the appellant's father sent a detailed legal





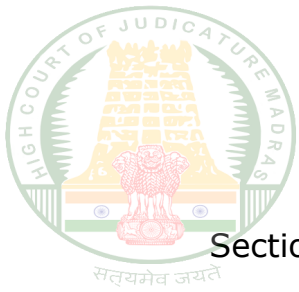
representation to the Commissioner of Police, Coimbatore dated on

10.03.2022.

v) The allegation of the prosecution case is entirely false as he did not commit any offence as alleged by the prosecution and he is an innocent. He did not have any criminal case against him and he serves as a social activist and helps the poor with the help of an organization, however, the instant case was registered against the appellant to cover up their misdeeds.

vi) Originally the appellant was taken by the Trichy Police illegally and kept in illegal custody and thereafter, the false case was foisted against him. The averments of the FIR is totally false. The appellant had never been to the place of occurrence as stated by the FIR. The complaint lodged by the Sub Inspector of clearly discloses that a false and cooked up case is foisted against the innocent people belonging to the minority to brand them as anti national elements.

vii) The respondent had filed alteration report only for the purpose of keeping the appellant in long incarceration by invoking section 16 of Unlawful Activities (Prevention) Act, however, ignoring the said aspect, the remand was extended by the Learned Judicial Magistrate V, Coimbatore which, is totally against the provision of



Section 43D(2)(B) of the Unlawful Activities (Prevention) Act, 1967.

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viii) The prosecution version does not reveal any ingredients of the offence charged in the FIR and alteration report and the allegation in the FIR, at no stretch of imagination, can fall within the definition of "Terrorist Act" as required under section 2(1)(k) and under Section 15 of the Unlawful Activities (Prevention) Act, 1967 and the association in which the appellant is a Member is also not a "Terrorist Organization".

ix) In fact, the first respondent had referred the investigation of the case to the National Investigation Agency (NIA), the second Respondent, however, the second respondent, finding that the facts of the case do not warrant investigation by NIA, had rejected the proposal for investigation by them.

x) The Trial Court failed to consider the fact that there are no criminal antecedents for the appellant.

xi) The case of the prosecution is not genuine and is shrouded with doubts when especially neither the said Arunkumar nor his father has made any complaint to the respondent police. The entire case has been foisted on the basis of some vested elements, who are against the Association, in which the appellant is a member, which is carrying on benevolent activities. The appellant Association is not a banned



organization.

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xii) The Trial Court failed to exercise the discretion in a judicious manner known to law and it is not sustainable as it is in violation of parameters of granting a bail as laid down by the Apex Court. Thereby the order of dismissal of bail is liable to be set aside and the appellant is entitled to bail.

5. In support of his contention, the learned counsel for the appellant would rely upon the decision in

i) ***National Investigation Agency vs. Zahoor Ahmad Shah Watali*** (2019) 5 SCC 1

ii) ***Union of India vs. K.A.Najeeb*** (2021) 3 SCC 713

6. A counter affidavit has been filed on behalf of the first respondent and pointing out the contents of the same, Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor would submit his arguments as under:-

i) The appellant filed a bail application in CrI.M.P.No.1299 of 2022 and it was dismissed by the Principal District and Sessions Judge, Coimbatore on 23.03.2022. The appellant filed a second petition before the same Court in CrI.M.P.No.2129 of 2022 and it was also dismissed by the same court on 27.04.2022 and he had filed the

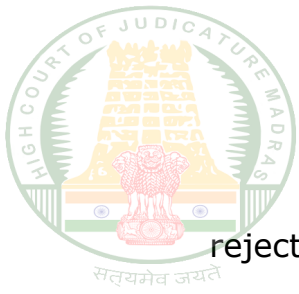


present bail petition in Crl.M.P.No.2394 of 2022 and it was also dismissed by the Vacation and Sessions Judge, Coimbatore on 12.05.2022 and aggrieved against the same, the appellant has now filed the present Criminal Appeal to set aside the said Order of the Vacation and Sessions Judge, Coimbatore in Crl.M.P.No.2394 of 2022 dated 12.05.2022.

ii) The false implication of the appellant in the case is denied. In fact, the appellant himself admits in paragraph No.3 of his affidavit that he had involved himself in an organization, namely "Indian Muslim Development Association" in Trichy and he has posted all his services of the said society at his Facebook pages.

iii) The allegation of he being threatened by a police by name Suresh working at Trichy Intelligence Section to stop his activities with Indian Muslim Development Association and personal vengeance against the appellant on his refusal to abide by the same is a false one.

iv) The allegation that the appellant was detained in illegal custody from 4.3.2022 at the instance of one Suresh is utter false and the representation of the appellant's father given on 10.3.2022 to the Commissioner of Police, Coimbatore City was duly enquired and



rejected for want of merits.

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v) It is not a valid ground to say that the appellant has been under incarceration for 100 days and considering his age and health conditions, he is entitled to grant of bail.

vi) There are certain materials in the exclusive knowledge of the investigating officer to show that the appellant would likely tamper evidence and hamper the investigation if enlarged on bail.

vii) Though the appellant has no criminal antecedent, the offences involved in the present case are very grave and likely to incite communal violence.

viii) The appellant is not entitled to bail in view of the settled law that the accused involved in heinous offences are not eligible for bail till the completion of trial.

ix) Considering all the aspects, the Vacation Sessions Judge, Coimbatore has passed a speaking order declining to grant bail, which does not warrant any interference and hence, the Criminal Appeal is liable to be dismissed.

7. Mr.R.Karthikeyan, learned Special Public Prosecutor appearing for the second respondent would submit that in fact, the first respondent had forwarded a proposal for taking up the investigation,



however, the second respondent had not accepted the proposal of investigation by NIA.

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

9. The order under challenge in this Criminal Appeal is one of denial of bail sought for by the appellant, who is alleged to have committed offences punishable under Sections section 153A(1)(b), 120(B) of IPC and Section 7(1)(a) of CLA Act 1932 @ Section 153A(1)(b), 120(B) of IPC and Section 7(1)(a) of CLA Act 1932 and section 25(1A) of Arms Act @ Section 153A(1)(b), 120(B) and 201 of IPC and Section 7(1)(a) of CLA Act, 1932 and section 25(1A) of Arms Act and Section 16 of Unlawful Activities (Prevention) Act 1967.

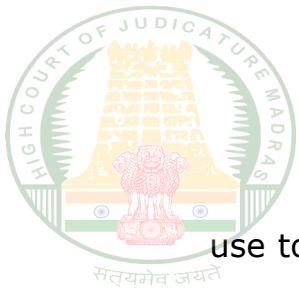
10. The case of the prosecution is that when one P.Silambarasan, Sub Inspector of Police of Selvapuram Police Station with his Head Constable 2395 Solomon was on usual rounds on duty, he found the appellant loitering at the junction of Indra Nagar and Amul Nagar 1st Street and on suspicion, he had enquired the appellant, which revealed that the appellant was deputed by one Bakrudeen, IMDA President of Chennai over phone to watch over the movements of one Kumaresan of that locality. His further enquiry



revealed that the appellant had been deputed so by Bakrudeen as an outcome of a criminal conspiracy to give signals to the said Bakrudeen and his associates Imran and Mohammed Ali Jinna to enable them to murder the said Kumaresan, as he had objected to conversion of his son Arunkumar to Islam on marrying a girl by name Sahana Azmi, daughter of Rajamohammed and Noor Nisha of Tiruvarur, with whom, he had fallen in love.

11. It is the further case of the prosecution that their further investigation revealed that the intention of all the accused was to murder the said Kumaresan, a Hindu and thereby create a fear and strike terror in the minds of people of other religion so that they would not venture to marry people from Islam faith and convert them to Hinduism which attracts the offence punishable under Section 16 of Unlawful Activities (Prevention) Act, 1967 apart from the other IPC offences and thereby the appellant is not entitled to grant of bail in view of the bar provided under section 43D(5) of the Unlawful Activities (Prevention) Act.

12. Whereas, it is the case of the appellant that he is an innocent social activist being a Member of an organization called "Indian Muslim Development Association" engaged in Social Activities in Trichy and he



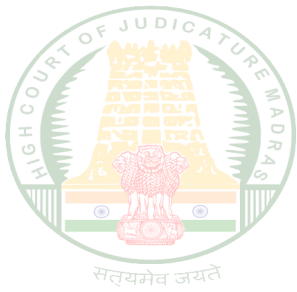
use to post his services in his Facebook pages, which was objected by some police personnel, however, he had not stopped and having aggrieved over the same, a false case has been foisted against him and he is being harassed under the guise of he having been indulging in terrorist activities leading to communal clash and the entire case of the prosecution is a fabricated one on the instigation of some vested elements, which are against the appellant and even assuming for a moment, the averments against the appellant are accepted, they would not make out a case for offence punishable under Section 16 of the Unlawful Activities (Prevention) Act.

13. Having perceived that the offences alleged against the appellant is grave in nature and finding that the investigation is in the premature stage the court below had denied the personal liberty sought for by the appellant pending investigation of the case, the correctness of which is in question before us.

14. Therefore, before entering into the merits of the case, this court feels that it would be relevant to refer to the provisions of the of the Unlawful Activities (Prevention) Act and they are extracted hereunder:-

**"2. Definitions.—(1) In this Act, unless the context**





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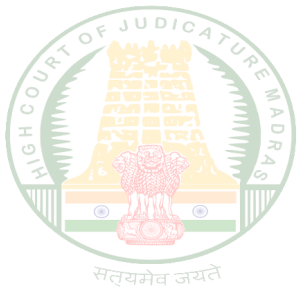
*otherwise requires,—*

(k) **"terrorist act"** has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

**15. Terrorist act.**— (1) *Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—*

*(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause--*

*(i) death of, or injuries to, any person or persons; or*



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*(ii) loss of, or damage to, or destruction of, property; or*

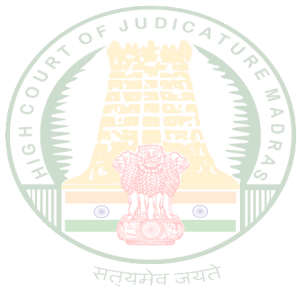
*(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or*

*(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or*

*(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or*

*(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or*

*(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any*



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*other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act; or commits a terrorist act.*

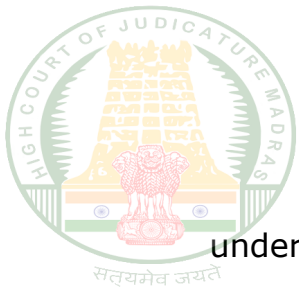
*(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.*

**16. Punishment for terrorist act.**—(1) *Whoever commits a terrorist act shall,—*

*(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;*

*(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."*

15. The appellant has been charged for offences punishable



under Sections section 153A(1)(b), 120(B) of IPC and Section 7(1)(a) of CLA Act 1932 @ Section 153A(1)(b), 120(B) of IPC and Section 7(1)(a) of CLA Act 1932 and section 25(1A) of Arms Act @ Section 153A(1)(b), 120(B) and 201 of IPC and Section 7(1)(a) of CLA Act, 1932 and section 25(1A) of Arms Act and Section 16 of Unlawful Activities (Prevention) Act 1967.

16. The offence under Section 16 of the Unlawful Activities (Prevention) Act 1967 falls within Chapter IV of the said Act. When an offence falls within the provisions of Chapter IV of the Act, necessarily, while deciding an Application for bail, the court has to take into consideration the proviso to Section 43D(5) of the Act and this court has to formulate an opinion as to whether there are reasonable grounds for believing that the accusation against the accused is prima facie true.

17. Now, coming to the facts of the case on hand, the core allegation against the appellant is that he had been party to the conspiracy to murder one Kumaresan and thereby to create a fear and strike terror among a section of people to prevent them indulging in inter religious marriage as the said Kumaresan had objected for conversion of his son Arunkumar who had married a Muslim girl out of

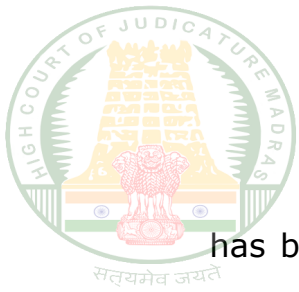


their love affair.

**WEB COPY** 18. It is very much relevant to note that no offence had actually taken place and no complaint has arisen from the so-called victim viz., Kumaresan, but, it is the case of the prosecution that merely on a suspicion that has arisen in the mind of a police officer on seeing the appellant during his routine rounds, he had enquired him and on the confession statement given by the appellant, the entire case of the prosecution had commenced and thereafter, keeping the statement of the appellant as a base, the other links of the case of the prosecution viz., the associates of the appellant in the alleged conspiracy had been fused.

19. Initially, the prosecution had come out with the allegations against the accused for the offences punishable under the provisions of IPC and Criminal Law Amendment, later, the offence under the provisions of Arms Act got included and thereafter, the offence punishable under the provision of Unlawful Activities (Prevention) Act was introduced.

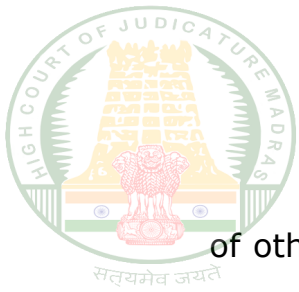
20. Such gravity of offences alleged by the prosecution against the appellant is viewed as a hurdle by the court below for grant of personal liberty to the appellant during investigation. Therefore, it



has become necessary for this court to go into the merits of the case to some extent.

21. The gravity of offence alleged against the appellant and other accused in the case on hand is culled out by the prosecution from the motive attributed to the accused. The motive so attributed against the accused by the prosecution has got two limbs, one being the removal of the hindrance in converting one Arunkumar, who had married a Muslim girl from Hinduism to Islam and the other being the threat to the other section of people not to collide with Islam.

22. A logical analysis would reveal that both the limbs of motive travel *vice versa* and they cannot be meeting at any point. It is the case of the prosecution that by committing murder of Kumaresan, a Hindu and father of Arunkumar, the accused had intended to remove the obstacle in their ambition to convert the said Arunkumar to Islam, whereas, the intention attributed to them to create a fear among the people of other section is the other extreme of the first limb. The *modus operandi* of the accused could have been secret had their intention was to murder the said Kumaresan so as to avoid his objection in converting his son to Islam and it could be an open one had the intention of the accused was to create fear among the people



of other section. From the perusal of the case diary and the materials available, other than the appellants and the other accused having been arrested based on suspicion and their confession being recorded while in custody and recovery of Bill Hooks from the other accused, there is no other material to pin point that the appellant and other accused had intended to commit the murder of Kumaresan and to create terror and fear among the public and people of other section.

23. Moreover, a perusal of the materials available on record reveals that the State police has referred the case to be investigated by the National Investigation Agency, however, said proposal was rejected by the National Investigation Agency which speaks much about the case of the prosecution.

24. It would also be relevant to refer here the aspects to be considered for deciding an application for bail as laid down by a Division Bench of the Apex Court in ***National Investigation Agency vs. Zahoor Ahmad Shah Watali*** (2019) 5 SCC 1:-

*"(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*

*(ii) nature and gravity of the charge;*



*(iii) severity of the punishment in the event of conviction;*

*(iv) danger of the accused absconding or fleeing, if released on bail;*

*(v) character, behaviour, means, position and standing of the accused;*

*(vi) likelihood of the offence being repeated;*

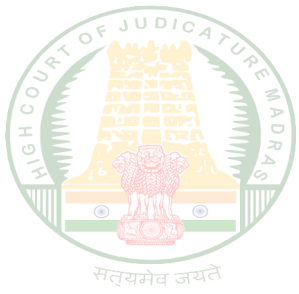
*(vii) reasonable apprehension of the witnesses being tampered with; and*

*(viii) danger, of course, of justice being thwarted by grant of bail."*

25. With regard to grant of bail in the cases of grave offences, it is relevant to note that while dismissing an appeal filed by the Union of India against grant of bail in a case of offence punishable under Unlawful Activities (Prevention) Act, 1967, a Full Bench of the Apex Court in ***Union of India v. K.A. Najeeb*** (2021) 3 SCC 713, has held as under:-

**"17.** It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional



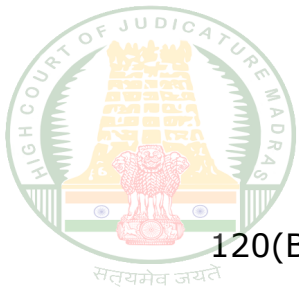


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courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

26. In case on hand, as stated above, initially, a case was registered based on suspicion and confession statement of the appellant for an offence punishable under Sections 153A(1)(b),



120(B) of IPC and Section 7(1)(a) of CLA Act 1932. Later, on the basis of the recovery of 3 long sized bill hooks from the other accused, the case was altered to one under Sections 153A(1)(b), 120(B) of IPC and Section 7(1)(a) of CLA Act 1932 and section 25(1A) of Arms Act and subsequently, once again, on the basis of the confession of Noor Nisha, it was altered to one under Sections 153A(1)(b), 120(B) and 201 of IPC and Section 7(1)(a) of CLA Act, 1932 and section 25(1A) of Arms Act and Section 16 of Unlawful Activities (Prevention) Act, 1967.

27. There was no complaint from any person and nobody was injured in this case. Therefore, in the opinion of this court, the provisions of Unlawful Activities (Prevention) Act have been included only in order to deny/delay the appellant from getting bail from the court.

28. As stated above, taking into consideration the facts and circumstances of the case in the light of the decisions referred to above and a perusal of the case diary, this court is of the opinion that the allegations against the appellant do not fall within the definition of "Terrorist Act" and there are no reasonable grounds for believing that the accusation against the appellant is prima facie true.

29. In view of the above, the Criminal Appeal is allowed and the



order dated 12.5.2022 in CrI.M.P.No.2394 of 2022 passed by the Vacation & Sessions Judge, Coimbatore is set aside and the appellant is ordered to be released on bail in Crime No.85 of 2022.

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 Judicial Magistrate V, Coimbatore;

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

(c) the appellant shall report before the respondent on every Monday and Thursday at 10.30 a.m. until further orders.

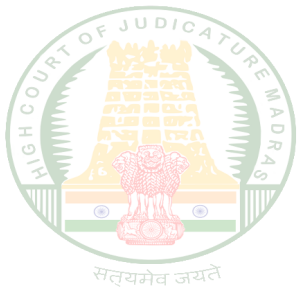
(d) the appellant shall not leave the State of Tamil Nadu without intimating the respondent police.

(e) the appellant shall not commit any offences.

(f) the appellant shall not abscond during investigation.

(g) the appellant shall not tamper with evidence or witness.

(h) the appellant shall furnish the Mobile Number, which shall not be changed till the issue comes to a logical end. However, he is permitted to change the portability.

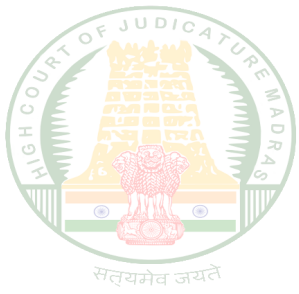


(i) the appellant shall surrender his passport, if any, to the Trial Court. For the purpose of renewal, the original can be taken by making an application and the renewed one shall be surrendered within a week of receipt of the same;

(j) the appellant shall not travel abroad without the permission of the Court. In case he wants to go abroad, while seeking permission, he shall furnish the address and place, where he is going to stay together with mobile number and email and if he stays in hotel, the details of the accommodation and the period of stay, mode of travel alongwith the complete itinerary shall be furnished to the Trial Court as well as Police.

(k) on breach of any of the aforesaid conditions, the learned Judicial Magistrate V, Coimbatore 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 Judicial Magistrate V, Coimbatore himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala*** [(2005)AIR SCW 5560];

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



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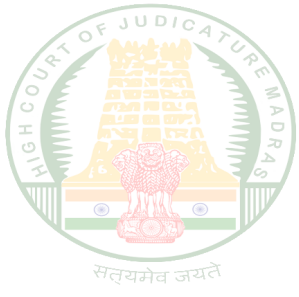
30. Before parting with, we make it clear that the observations and findings recorded in this judgment are only for the limited purpose of considering the application for bail and the Special Court shall not be influenced by the same during the trial or while rendering its decision.

(S.V.N.,J.) (A.D.J.C.,J.)  
26.8.2022.

Index: Yes/No.  
Internet: Yes/No.  
ssk.

To

1. The Vacation & Sessions Judge,  
Coimbatore.
2. Inspector of Police,  
Selvapuram Police Station (L&O),  
Coimbatore City, Coimbatore.
3. The Inspector of Police,  
National Investigation Agency,  
Chennai.
4. The Superintendent,  
Sub Jail,  
Gobichettipalayam,  
Erode District.
5. The Public Prosecutor,  
High Court, Madras.



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

ssk.

P.D. JUDGMENT IN  
Criminal Appeal No.597 of 2022

Delivered on  
26.8.2022.