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Crl.A. No.157 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	21.03.2022
DELIVERED ON	22.04.2022

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

and

THE HON'BLE MR. JUSTICE A.A. NAKKIRAN

Crl.A. No.157 of 2022

Suresh Rajan

Appellant

vs.

The State
represented by the Inspector of Police
National Investigation Agency
Chennai

Respondent

Criminal Appeal filed under Section 21 of the National Investigation Agency Act, 2008, seeking to set aside the order dated 10.01.2022 passed in Crl.M.P. No.332 of 2021 in C.C. No.3 of 2021 on the file of the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai, at Poonamallee.

For appellant

Mr. R. Sankarasubbu

For respondent

Mr. R. Karthikeyan

Spl. Public Prosecutor for NIA Act Cases



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JUDGMENT

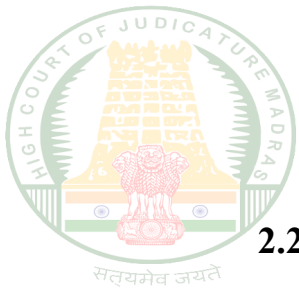
P.N. PRAKASH, J.

This criminal appeal has been preferred seeking to set aside the order dated 10.01.2022 passed in Crl.M.P. No.332 of 2021 in C.C. No.3 of 2021 on the file of the Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases), Chennai, at Poonamallee (for brevity “the Special Court”).

2 The facts in a nutshell leading to this criminal appeal are as under:

2.1 One Vivek @ Vivekanandan (A.1) has a Facebook account entitled “Thozhar Vivek”. On 15.08.2020, being our Independence Day, he posted a message in his Facebook account in Tamil, the free English translation of which reads as under:

“The change of regime that happened in 1947 is a sham because it has not got rid of feudalism, imperialism and exploitation of the poor and therefore, August 15th is a farce independence. In order to gain real independence, let us mobilise in the path of war shown by Naxalbari.”



2.2 Noticing this post, a case in D-1 Tallakulam P.S. Cr.No.1916 of 2020

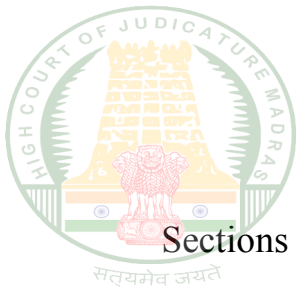
was registered on 01.09.2020 for the offences under Section 13(1)(b) of the Unlawful Activities (Prevention) Act, 1967 (for brevity “the UAP Act”) and Section 505(1)(b) IPC by the State police and Vivek (A.1) was arrested on 16.12.2020.

2.3 Based on the orders dated 12.03.2021 passed by the Central Government, the case in D-1 Tallakulam P.S. Cr.No.1916 of 2020 was transferred to the file of the National Investigation Agency (for brevity “the NIA”) and re-registered as RC-07/2021/NIA/DLI dated 14.03.2021.

2.4 The NIA took up the investigation of the case and arrested Suresh Rajan (A.2), the appellant herein, on 08.06.2021 and remanded him in judicial custody.

2.5 Meanwhile, bail was granted to Vivek (A.1) by the Special Court on 05.05.2021 on the ground that the charge sheet was not filed within 90 days of his arrest, viz., on or before 15.03.2021. The appeal preferred by the NIA thereagainst was dismissed by this Court on 28.06.2021.

2.6 The NIA completed the investigation and filed a final report on 11.06.2021 in C.C. No.3 of 2021 in the Special Court for the offences under



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Sections 120-B, 124-A, 201 and 505(1)(b) IPC and Sections 13(1)(b), 38 and 39

of the UAP Act against Vivek (A.1) and Suresh Rajan (A.2) and an advocate by name Mohan (A.3).

2.7 While so, Suresh Rajan (A.2) preferred a bail application in Crl.M.P. No.332 of 2021 in C.C. No.3 of 2021 which has been dismissed by the Special Court on 10.01.2022, aggrieved by which, the present appeal has been filed by Suresh Rajan (A.2).

3 Heard Mr. R. Sankarasubbu, learned counsel for Suresh Rajan (A.2) and Mr. R. Karthikeyan, learned Special Public Prosecutor for the NIA.

4 The NIA has filed a detailed counter affidavit objecting to the grant of bail to Suresh Rajan (A.2).

5 This Court gave its anxious consideration to the rival submissions.

6 The allegations against the accused trio *viz.*, Vivek (A.1), Suresh Rajan (A.2) and Mohan (A.3) can be summarised as under:

Vivek (A.1) opened a Facebook account entitled “Thozhar Vivek” by using a sim card bearing no.90876 14797 belonging to Suresh Rajan (A.2). Thereafter, he accessed the said Facebook account with the mobile phone and sim card of Mohan (A.3) and uploaded the impugned post in his Facebook account. Even

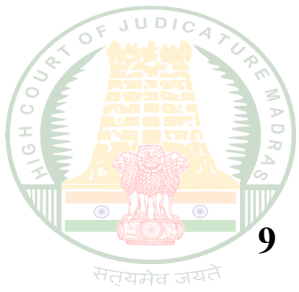


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according to the NIA, on 18.12.2020, two days after the arrest of Vivek (A.1), Suresh Rajan (A.2) had deleted the Facebook account entitled “Thozhar Vivek” by using his mobile no.88708 04797. The NIA had not chosen to arrest Mohan (A.3) because, according to them, he is physically challenged. Thus, when both Vivek (A.1) and Mohan (A.3) are not in incarceration, we are of the view that no purpose would be served by keeping Suresh Rajan (A.2) alone in custody any further.

7 However, in the counter affidavit, the NIA has stated that Suresh Rajan (A.2) is an active member of a banned outfit, viz., C.P.I. (M) and therefore, he would continue to involve himself in subversive activities, if enlarged on bail.

8 As regards other cases against Suresh Rajan (A.2), except the case in Oothangarai P.S. Cr.No.1005 of 2002, all other cases relate to violation of prohibitory orders and engaging in dharna. If Suresh Rajan (A.2) continues to subscribe to the C.P.I. (M) philosophy, then, there is no point in releasing him on bail because C.P.I. (M) is a banned organisation under the UAP Act and it exhorts its members to take to violence for achieving its political agenda. In other words, they believe in the bullet and not in the ballot.



9 Mr. Sankarasubbu submitted that Suresh Rajan (A.2) is neither a sympathiser nor a member of the C.P.I. (M) group and that he has faith in the Indian Constitution.

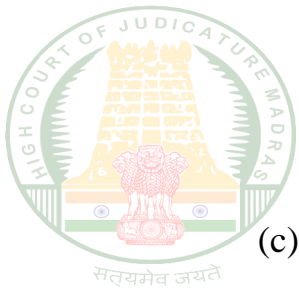
10 Aceeding to the aforesaid submission of Mr. Sankarasubbu, we are inclined to grant bail to Suresh Rajan (A.2) on the following conditions:

(i) Suresh Rajan (A.2) shall file a sworn affidavit in Tamil affixing his signature and thumb impression before the Special Court stating that:

- (a) he owes faith and allegiance to the Constitution of India and that he does not believe in the Maoist ideology or the ideology of CPI (M);
- (b) he does not believe in violence as an ideology; and
- (c) he would do nothing to subvert the Constitution of India.

(ii) On Suresh Rajan (A.2) filing such an affidavit before the Special Court, he shall be enlarged on bail on he satisfying the following conditions :

- (a) Suresh Rajan (A.2) shall execute a bond for a sum of Rs.25,000/- with two sureties for a like sum each to the satisfaction of the Special Court. He shall also furnish his permanent address and shall inform the trial Court and the respondent about any change in his address.
- (b) The two sureties shall be Suresh Rajan's (A.2's) blood relatives and they shall affix their photographs and Left Thumb Impression in the surety bond and the Special Court may obtain a copy of their Aadhaar card or bank pass book and mobile numbers to ensure their identity.



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(c) Suresh Rajan (A.2) shall appear before the Special Court daily at 10.30 a.m. and sign until further orders.

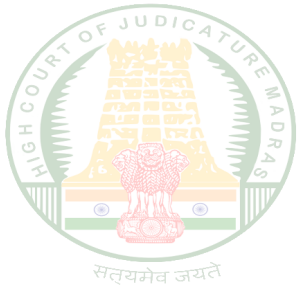
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11 It is made clear that if Suresh Rajan (A.2) adopts any dilatory tactics during trial, it is open to the Special Court to cancel his bail and remand him in custody, as laid down by the Supreme Court in **State of U.P. Vs. Shambhu Nath Singh (2001) 4 SCC 667**. It is further made clear that though bail is granted by this Court, as held by the Supreme Court in **P.K.Shaji Vs. State of Kerala [(2005) 13 SCC 283]**, the Special Court can cancel the bail, if the situation so warrants. If he absconds, a fresh FIR shall be registered against him under Section 229-A IPC.

In the upshot, this criminal appeal stands allowed on the above terms.

(P.N.P., J.) (A.A.N., J.)
22.04.2022

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P.N. PRAKASH, J.
and
A.A. NAKKIRAN, J.

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To

- 1 The Inspector of Police
National Investigation Agency
Chennai
- 2 The Special Judge under the National Investigation Agency Act, 2008
(Sessions Court for exclusive trial of bomb blast cases)
Chennai at Poonamallee
- 3 The Public Prosecutor
Madras High Court
Chennai 600 104

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