



**IN THE COURT OF XLIX ADDL. CITY CIVIL AND SESSIONS
JUDGE, [SPECIAL COURT FOR TRIAL of NIA CASES],
(CCH-50) AT BENGALURU**

Dated this the 03rd day of June, 2022

PRESENT:

Sri Gangadhara C.M.,
B.Com., LL.B.,
XLIX Addl. City Civil & Sessions Judge,
[Special Court for trial of NIA Cases],
(CCH-50) Bengaluru.

S.C.No.381/2015 C/w S.C.No.1347/2016

COMPLAINANT : The State of Karnataka
Vyalikaval Police Station
(CCB), Bengaluru.

(By : Spl. Public Prosecutor)

V/s.

ACCUSED : Sri Basheer @ Baseer and others

ACCUSED NO.21 : Mr. Daniel Prakash,
S/o Mr. Devasahaiyam,
Aged about 37 years,
R/at Padukudi Village,
Tirunelveli, Tamil Nadu.

(By: Sri Nagesh M., Advocate)

ORDERS

Accused No.21 – Mr. Daniel Prakash has filed bail application under Section 439 of Cr.P.C. seeking regular bail in this case.

2. Accused No.21 has stated the facts of the case in brief and he has specifically pleaded that this Court has framed

the charges against him for the offences punishable under Sections 307, 332, 333, 435 of the IPC, Sections 3 and 5 of the Explosive Substances Act, 1908, Section 4 of the Destruction of Public Property Act and he is not an accused of any offence under Unlawful Activities (Prevention) Act, 1967 (for short 'UAPA') or charged under Sections 120-B, 121 or 124 of the IPC. Hence, the rigor of Section 43-D of UAPA is not applicable to him. The only allegation against him is that he supplied explosives to accused No.16, who as per the records nowhere disclosed that he collected the explosives for the purpose of using the same to cause blast at BJP Office, Malleshwaram, Bengaluru. He never associated with the material accused persons nor he has taken part in any of the conspiracy meetings held by other accused. He had no any criminal intention in supply of explosives for two times to accused No.16, who misrepresented him stating that the explosives are required for civil work. There is no material to show that the explosives provided by him are used in commission of the offence. Neither he acted for any money consideration nor for any financial benefit as alleged by the prosecution. He was arrayed as accused in this case after arrest of accused No.16. None of the other accused had never met or knew him as he never part of any conspiracy nor had any knowledge about the end use of the explosives procured through him. He has further pleaded that he was an elected representative and was holding the position of Vice President in his Panchayat at the time of his arrest. He was not aggrieved by any action of BJP, as he was very active member of AIADMK, which remains ally of BJP. He has further pleaded that he is a Christian by faith and a very active member

of his Church and unfathomable to believe that he is active member of Al-Umma a Muslim fundamental organization. He has further pleaded that the trial has commenced and PW.1 has been partly deposed and the prosecution has more than 200 witnesses to be examined in this case. Hence, the culmination of trial in the near future seems remote and impossible. He has no knowledge about the voluntary statement which is in Kannada as he does not know English or Kannada. He has further pleaded that he hails from a respectable family and there are no bad antecedents against him and has got deep roots in the society. He has further pleaded that he is ready and willing to abide by any terms and conditions that may be imposed by this Court and ready to offer surety to the satisfaction of this Court. Hence, he has prayed to allow the bail application.

3. The learned Special Public Prosecutor has opposed the bail application by filing his objections. He has stated the facts of the case in brief and specifically contended that the alleged offences are non-bailable and punishable with death or imprisonment for life. The investigating officer has filed the charge-sheet against this accused No.21 and other accused and this Court has framed charges against them. Accused No.21 had filed bail application before this Court as well as before the Hon'ble High Court of Karnataka and the same were rejected. The present bail application has been filed by this accused No.21 without any valid or additional grounds. Hence, the application is liable to be dismissed. Accused No.21 was requested by accused Nos.16 and 23 to supply explosives and he supplied the explosives i.e., gelatin and electric detonators to

accused No.23 and he knew the conspiracy made by other accused and the said explosives will be used for commission of the offence. He was arrested by the CID, Tamil Nadu, in connection with the supply of explosive substances in S.C.No.1/2014 and prosecuted him before the Special Court, Ponnamalai with similar allegations. There are no changed circumstances that arise to accused No.21 to file the present bail application on the same ground. If accused No.21 is released on bail, he may tamper the prosecution witnesses and threaten them from giving evidence in favour of the prosecution. Hence, he has prayed to reject the bail application.

4. This Court has heard the arguments of the learned counsel appearing for accused No.21 and the learned Special Public Prosecutor.

5. The points that arise for Court consideration are as follows :-

1. ***Whether accused No.21 has made out any grounds to exercise the discretion under Section 439 of Cr.P.C., and to enlarge him on regular bail?***

2. ***What order?***

6. Findings of this Court to the above points are as follows:-

Point No.1 : In the negative;

**Point No.2 : As per final order,
for the following:-**

REASONS

7. **Point No.1:-** It is the allegation of the prosecution that the accused persons involved in this case are the activist of the proscribed outfit called Al-Umma which is a banned organization under the UAPA by the Government of Tamil Nadu. The said organization is an Islamic fundamental organization which advocates liberalization of India by converting the same as an Islamic land by declaring religious war styled as Jihad against India by forced conversion and by violence. In order to carryout Jihadi activities, accused Nos.3, 8, 9 and 10 hatched criminal conspiracy with accused Nos.2, 5, 6, 7, 11, 12, 13, 14, 16 and 18 for conducting various blasts, thereby to wage war against India. In furtherance of the said conspiracy, several meetings were held by the accused persons between October 2012 and April 2013 at Coimbatore in Tamil Nadu and hatched a plan to cause a bomb blast, to take revenge against ruling BJP Government in Karnataka. In furtherance of the said conspiracy, the accused persons secured explosive materials and caused blast at BJP Office, Malleshwaram, Bengaluru on 17.04.2013 at 10.20 am. In the said blast, the KSRP Van bearing No.KA-01-G-8473 suffered damage, 12 KSRP Police personnel sustained injuries and six civilians also sustained multiple bleeding injuries. The motor cycle bearing No.TN-22-R-3739 in which the bomb was planted also crumbled into pieces and the vehicles which were parked near the said place i.e., two wheelers and four wheelers also sustained damages and nearby buildings were also damaged. In this regard, Sri C.R. Nanjappa, the PSI of Sadashivanagar Traffic Police Station set the criminal law into motion by lodging

the first information statement. Based on the said information, the SHO of the Vyalikaval Police Station registered a case in Crime No.118/2013 for the offences punishable Sections 121, 121-A, 120-B, 123, 201, 435, 307 and 332 of the IPC, Sections 3, 4, 5 and 6 of Explosive Substances Act, 1908, Sections 3 and 4 of Prevention of Damage to Public Property Act, Sections 3, 10, 11, 13, 16, 17, 18, 19 and 20 of UAPA against the unknown persons. Subsequently, the matter was referred to CCB, Bengaluru for investigation. The CCB took up the matter for investigation, collected evidence and submitted the charge-sheet against the accused persons before this Court. The charges were framed against the accused persons including accused No.21 and the prosecution has begun the evidence. At this stage, accused No.21 has filed this application seeking regular bail in this case.

8. It is well settled legal position that the Court cannot hold a mini trial while considering the bail application whereas, the Court has to consider whether there is any prima facie case or reasonable grounds to believe that the accused is involved in the alleged crime, nature and gravity of the offence, severity of the punishment in the event of conviction, chances of fleeing away from the justice, chances of threatening or tampering of the prosecution witnesses, antecedents of the accused and the interest of society at large. These principles have emerged from the catena of the decisions of the Hon'ble Apex Court. Out of the said catena of the decisions, this Court has placed reliance on the decision in the case of ***Virupakshappa Gouda and Another v. The State of Karnataka and another, (2017) 5 SCC 406***. In

this decision, the Hon'ble Apex Court has clearly held at para 15 as under :-

“15. The court has to keep in mind what has been stated in Chaman Lal vs. State of U.P. and another[3]. The requisite factors are: (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In Prasanta Kumar Sarkar vs. Ashis Chatterjee and another[4], it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said passage:-

“9....among other circumstances, the factors which are to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to be believed that the accused had committed the offence;***
- (ii) nature and gravity of the accusation;***
- (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 influenced; and***
- (viii) danger, of course, of justice being thwarted by grant of bail.”***

9. Keeping in mind the aforesaid salutary principles, this Court has taken the facts of the case for consideration.

10. The learned counsel for accused No.21 argued that accused No.21 is a Christian by religion. There are no charges against him under UAPA and the embargo to grant bail under Section 43-D(5) of the UAPA is not applicable to accused No.21. Even the offence punishable under Section 120-B of the IPC is also not applicable. The allegations made against accused No.21 attract only IPC offences and the offence under the Arms Act. Accused No.22 pleaded guilty for the similar offences. The only allegation against accused No.21 is that he supplied explosives to accused No.16 and there are no other allegations against him. He further argued that the name of accused No.21 was not inserted at the initial charge-sheet. There is no material to show that the allegation made against accused No.21 are true. He further argued that the maximum punishment prescribed for the offences charged against accused No.21 is 10 years and they are not punishable with death or imprisonment for life. Accused No.21 was not having any mens rea or actus reus to commit the alleged offence. He further argued that accused No.21 is not participated in any meetings of the conspiracy. Even it is not the allegation of the prosecution that he participated in any conspiracy to commit the alleged offence. He further argued that accused No.21 knew three persons i.e., accused Nos.16, 22 and 23 of this case and their connection is natural since they are same villagers and they have been working together. Hence, accused No.21 is entitled for bail.

11. Per contra, the learned Special Public Prosecutor argued before the Court that the accused persons entrusted

accused No.16 to purchase explosives. Thereafter, accused No.16 contacted accused No.18 and in turn, accused No.18 contacted accused Nos.21 and 23. He further argued that accused No.22 admitted his guilt that he handed over gelatin sticks and detonators to accused No.16. Hence, there is a strong prima facie case against accused No.21 about his involvement in the crime. He further argued that accused No.21 is not only involved in this case but also involved in similar case which is pending in Tamil Nadu Court for the similar allegations. Accused No.21 knew that gelatin and detonators are used for Jihadi activities by the other accused. He further argued that this Court has already formed an opinion that there is a prima facie case against accused No.21 about his involvement in the crime. Accused Nos.16 and 18 clearly admitted in their voluntary statements that accused No.21 supplied the gelatin and detonators. There is connecting evidence to show that accused No.21 is involved in the alleged crime and even he has admitted in his voluntary statement that he supplied the explosives to accused No.16. He further argued that the earlier bail application filed by accused No.21 was rejected by this Court and the successive bail application can be entertained by this Court only in the changed circumstances and there are no changed circumstances in this case to entertain the subsequent bail application. This Court has already considered the contention urged by accused No.21 while considering his earlier bail application. The delay in concluding the trial is caused due to the fault of the accused and not on the fault of the prosecution. Hence, the bail application is liable to be rejected.

12. This Court has perused the bail application, objections and materials available on record. It is the allegation against accused No.21 that accused No.16 approached accused No.23—Syed Ali in order to get the explosive substances for the purpose of commission of the offence, in turn he requested accused No.23 to introduce accused No.21. Accused Nos.16 and 23 requested accused No.21 to supply explosives and electric detonators for the purpose of Jihadi activities and told him that they would pay handsome amount for that purpose. Accused No.21 contacted accused No.22, collected gelatin sticks and detonator from accused No.22 and handed over the same to accused No.16 thrice. Accused No.21 actively involved in procurement of explosives and detonators knowing fully well that said explosive substances are required to plant bombs in Bengaluru and other parts of the State.

13. It appears from the records that the investigating officer recorded the voluntary statement of accused No.21. In the said voluntary statement, he admitted that he supplied explosives to accused No.16. Even the accused Nos.16 and 23 have stated in their voluntary statements that accused No.21 supplied explosives for their Jihadi activities. Accused No.22 also stated in his voluntary statement that he handed over gelatin sticks and detonators to accused No.21 in the month of January, February and March, 2013. The investigating officer has also collected the evidence to show that accused No.21 met accused No.22 to collect the explosives and negotiated with him at the work place of accused No.22. In this regard the witness – Sri Singa Dorai S/o Unapal Nadar gave his statement before the

investigating officer. Even accused No.21 and other accused persons took the investigating officer to the places where they handed over and collected explosives with each other and showed the spot to the investigating officer. Accordingly, the investigating officer prepared mahazars in the respective places at the instance of accused persons. Accused No.22 has admitted his guilt before this Court and thereby accused No.22 has been convicted by this Court. This fact further strengthens the case of the prosecution about the involvement of accused No.21 in the alleged crime. Therefore, there is a strong prima case against accused No.21 about his involvement in the crime. Though the alleged offences charged against accused No.21 are punishable with imprisonment for 10 years, the alleged offences are heinous in nature and accused No.21 supplied explosives to accused No.16 by knowing fully well that the said explosives were to be used for the purpose of jihadi activities.

14. The learned counsel for accused No.21 strongly contended that the voluntary statements given by accused persons are not admissible under the Indian Evidence Act. This Court cannot rely upon the said voluntary statements to come to the conclusion that there are prima facie materials against accused No.21 about his involvement in the alleged crime. In this regard, this Court has placed reliance on the decision of the Hon'ble Apex Court in the case of ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & another, (2014) 7 SCC 528.*** In this decision, the learned counsel for the appellants has put forth the same contention before the Hon'ble Apex Court. While

answering the aforesaid contention, the Hon'ble Apex Court has clearly held at para 19 as follows :-

“19. The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced herein after including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.” (emphasis supplied)

15. In view of the ratio laid down by the Hon'ble Apex court in the aforesaid decision, admissibility of voluntary statement made by the accused and other co-accused will be considered at the time of trial. The said fact cannot be considered at the time of considering the prima case to dispose off the bail application. Hence, admissibility of confession statements is a matter of trial and this Court cannot consider the said fact at this pretrial stage.

16. It is pertinent to note here that earlier accused No.21 filed bail application seeking regular bail in this case before this Court and the same was rejected on 21.11.2019 by holding that there is a prima facie case against accused No.21 about his involvement in the crime. The said bail application was filed by accused No.21 after filing the charge-sheet by the

investigating officer. Now, accused No.21 has filed a similar bail application on the similar grounds before this Court seeking regular bail. On perusal of the entire materials on record, there are no changed circumstances to consider the bail application filed by accused No.21. In this regard, this Court has placed reliance on the decision of the Hon'ble Apex Court in the case of ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & another, (2014) 7 SCC 528***. In this decision, the Hon'ble Apex Court has clearly held at para 20 as follows :-

“20. Before concluding, we must note though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26th July, 2000 canceled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character.

17. This Court has also placed reliance on the decision of the Hon'ble Apex Court in the case of ***Lt. Col Prasad Shrikant Purohit vs The State of Maharashtra, (2018) 11 SCC 458***. In this decision, the Hon'ble Apex Court has held at para 30 as follows :-

“30. Before concluding, we must note that though an accused has a right to make successive applications for grant of bail, the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.”

18. In view of the ratio laid down in the aforesaid decisions, a successive bail application is maintainable after verifying the changed circumstances and the Court can grant the bail to the accused in the changed circumstances based on the successive bail application. In this case, accused No.21 has not pleaded in his application the changed circumstances other than the circumstances under which the bail application filed by him was rejected by this Court. Hence, there are no changed circumstances to allow the bail application filed by accused No.21.

19. It is the apprehension of the prosecution that if the accused No.21 is released on bail, he likely to threaten the prosecution witnesses, tamper the prosecution evidence, flee away from the justice and hamper the trial. On the contrary, accused No.21 contended that he hails from respectable family and he is ready to abide by any conditions that may be imposed by this Court. It appears from the records that accused No.21 is the permanent resident of Tamil Nadu State. Now, the prosecution has commenced the evidence and material witnesses have to be examined by the prosecution. At this stage, if accused No.21 is released on bail, he is likely to flee away from justice and it is very difficult to secure him before this Court

for the purpose of trial since he is a permanent resident of Tamil Nadu State beyond the jurisdiction of this Court. The other apprehensions of the prosecution cannot be ruled out. Under these circumstances, it is not just and proper to grant bail to accused No.21 and this is not a fit case to exercise the discretion under Section 439 of Cr.P.C., **Accordingly, this Court has answered Point No.1 in the negative.**

20. **Point No.2** :- In view of the discussions made supra, this Court proceeds to pass the following :-

O R D E R

The bail application filed by accused No.21- Mr. Daniel Prakash, under Section 439 of Cr.P.C., is hereby dismissed.

(Dictated to the Judgment Writer, transcript thereof computerized by him, corrected and then pronounced by me in open Court on this the 03rd June, 2022.)

(GANGADHARA C.M.),
XLIX Addl. City Civil & Sessions Judge,
(Special Court for trial of NIA Cases),
(CCH-50) Bengaluru.