

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF SEPTEMBER, 2022

PRESENT

THE HON'BLE MR. JUSTICE K.SOMASHEKAR

AND

THE HON'BLE MR. JUSTICE T.G.SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO.1347 OF 2022

C/W

CRIMINAL APPEAL NO.1332 OF 2022

IN CRL.A NO.1347 OF 2022

BETWEEN:

JAMAL MOHAMED USMANI
@ JAMAL MOHAMED
AGED about 44 YEARS
S/O SHAHUL HAMEED
R/O 160A, PALLI VASAL THERU
PATHAMDAL, THIRUVELLUR DISTRICT.

... APPELLANT

(BY SRI.A. VELAN, ADVOCATE AND
SRI. SATHIES KUMAR. S, ADVOCATE (THROUGH V/C))

AND:

1. STATE BY VIDHANA SOUDHA
POLICE STATION,
BENGALURU
2. THE NATIONAL INVESTIGATION AGENCY,
DOMLUR,
BENGALURU - 560 071
REPRESENTED BY SPECIAL PUBLIC PROSECUTOR
NIA, BENGALURU.

... RESPONDENTS

(BY SRI. KIRAN S JAVALI, SPP-I FOR R1,
SRI. P. PRASANNA KUMAR,SPL.PP FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER 21 NIA ACT PRAYING TO ALLOW THE PRESENT APPEAL FOR GRANT OF BAIL TO THE PETITIONER IN CONNECTION WITH FIR NO.18/2022 DATED 19.03.2022 WAS REGISTERED AT VIDHAN SOUDHA POLICE STATION, BENGALURU U/S. 506(1), 505(1)(c), 505(1)(B), 153-A, 109, 504, 505(2) OF THE IPC SEC.15 AND 18 OF UNLAWFUL ACTIVITIES PREVENTION ACT, 1967, AND SET ASIDE THE ORDER DATED 11.07.2022 IN CRL.MISC.NO.6076/2022 BEFORE THE XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, (SPECIAL COURT FOR TRIAL OF NIA CASES) (CCH-50), BENGALURU (ANNEXURE-H)

IN CRL.A NO.1332 OF 2022

BETWEEN:

RAHAMATHULLAH
AGED ABOUT 37 YEARS,
S/O RIZVAULLA,
R/O ANGAPPAN STREET,
MANNADY,
CHENNAI-600 000.

... APPELLANT

(BY SRI.A. VELAN, ADVOCATE AND
SRI. SATHIES KUMAR.S, ADVOCATE)

AND:

1. STATE BY, INSPECTOR OF POLICE,
VIDHANA SOUDHA POLICE STATION
REPRESENTED BY STATE
PUBLIC PROSECUTOR
BENGALURU.
2. THE NATIONAL INVESTIGATION AGENCY,
DOMLUR,1ST STAGE,
BANGALORE, KARNATAKA.

... RESPONDENTS

(BY SRI.KIRAN S JAVALI, SPP-I FOR R1,
SRI.P. PRASANNA KUMAR,SPL.PP FOR R2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 21(4) OF NATIONAL INVESTIGATION AGENCY ACT PRAYING TO ALLOW THE PRESENT APPEAL FOR GRANT OF BAIL TO THE APPELLANT IN CONNECTION WITH FIR NO.18/2022 DATED 19.03.2022 WAS REGISTERED AT VIDHANA SOUDHA POLICE STATION, BENGALURU

U/S 506(1), 505(1)(C), 505(1)(B), 153A, 109, 504, 505(2) OF IPC AND SECTION 15 AND 18 OF UNLAWFUL ACTIVITIES PREVENTION ACT, AND SET ASIDE THE ORDER DATED IN CRL.MISC NO.4864/2022 BY THE HONOURABLE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (ANNEXURE-G).

THESE CRIMINAL APPEALS COMING ON FOR *ADMISSION*, THIS DAY, **K. SOMASHEKAR, J.**, DELIVERED THE FOLLOWING:

JUDGMENT

These two appeals are filed by the appellants / accused praying for grant of bail in connection with Crime No.18/2022 registered by Vidhana Soudha Police Station, Bengaluru registered for the offences punishable under Sections 506(1), 505(1) (C), 505 (1) (B), 153A, 109, 504, 505(2) of Indian Penal Code, 1860. Subsequent to registration of crime against the accused, offences under Sections 15 and 18 of the Unlawful Activities (Prevention) Act, 1967 were included. These appeals have been filed praying to set-aside the orders of rejection passed in Crl.Misc.No.4864/2022 dated 21.05.2022 and Crl.Misc.No.6076/2022 dated 11.07.2022. The said applications were filed by them under section 439 Cr.P.C. relating to the case in Cr.No.18/2022 registered by Vidhana Soudha Police Station. Both these appeals arise out of the same case in Cr.No.18/2022 registered by Vidhana Soudha Police Station for the offences punishable under sections 153A, 504, 505(1) (b), 505 (1) (c),

505(2), 506(1) and 109 of Indian Penal Code, 1860 and for offences under Sections 15 and 18 of the Unlawful Activities(Prevention) Act, 1967. Learned counsel seeks to allow the appeals and subsequently, to grant bail to the appellants / petitioners in CrI.Misc.No.4864/2022 and CrI.Misc.No.6076/2022.

2. Though these are slated for admission, with the consent of the learned Counsel Sri. A. Velan for the appellants appearing through video conferencing from Delhi and learned Spl. Public Prosecutor Sri. P. Prasanna Kumar for respondent No.2-National Investigating Agency and so also learned Senior Counsel/Spl. Public Prosecutor-I Sri. Kiran S. Javali for respondent No.1-State, the appeals are taken up for final disposal and are disposed of by this common order. Shri Sathies Kumar S appears before Court physically and represents the learned counsel Shri A. Velan for appellants.

3. Whereas learned Spl. PP Shri P. Prasanna Kumar for Respondent No.2 / NIA files a memo dated 02.09.2022 seeking dismissal of the present appeals as against Respondent No.2 / NIA relating to the case in Cr.No.18/2022 registered by the Vidhana Soudha P.S. The National Investigating Agency has been arraigned as Respondent No.2 in the above case though the

NIA is neither a necessary party nor a proper party nor is it connected with the investigation of the aforesaid case. This memo has been filed by the learned Spl. PP Shri P. Prasanna Kumar for Respondent No.2 / NIA. But the case in Cr.No.18/2022 of Vidhana Soudha P.S., State of Karnataka is a case registered against the accused for the offences under the IPC, 1860 and also for offences under Sections 15 and 18 of the Unlawful Activities (Prevention) Act, 1967. It is the domain vested with the Investigating Agency to proceed keeping in view the relevant provisions of the Cr.P.C. to file a charge-sheet or to proceed in accordance with law. Therefore, this memo is placed on record. Accordingly ordered.

4. We have heard the arguments advanced by the learned counsel Sri. A. Velan in CrI.A.No.1347/2022 and in CrI.A.No.1332/2022 for the respective appellants who are arraigned as accused in Cr.No.18/2022 by Vidhana Soudha Police Station. So also heard the arguments of the learned Spl. Public Prosecutor Sri. P. Prasanna Kumar for respondent No.2-National Investigating Agency and so also learned Senior Counsel/Spl. Public Prosecutor-I Sri. Kiran S. Javali for respondent No.1-State in both these appeals. Perused impugned orders passed by the

trial court regarding rejection of bail applications filed by the accused under section 439 Cr.P.C.

5. The factual matrix of these appeals are as under:-

It transpires that in respect of Cr.No.18/2022, the appellants have been arraigned as accused. The appellants being members of some Jamath, are said to have addressed a small gathering of the general public at Goripalyam, situated in Madurai, within the limits of Tamil Nadu and also at Adiramapattinam bus stand. During addressing the public gathering, the appellants / accused are said to have made some inflammatory speeches and in relation to the same, FIR No.223/2022 came to be registered against the accused Rahamathullah at Thallakulam Police Station, Madurai, Tamil Nadu for the offences punishable under sections 153A, 505(1)(b), 505(1)(c), 505(2), 506(1) and 109 IPC and FIR No.189/2022 came to be registered against the accused Jamal Mohamed Usmani @ Jamal Mohamed in Adiramapattinam Police Station, Thanjavur, Tamil Nadu for the offences punishable under sections 153, 153A, 504, 505(1)(b) and 505 IPC.

On the strength of the complaint made by the complainant, a second FIR No.18/2022 was registered at Vidhana Soudha Police Station, Karnataka under sections 506(1), 505(1) (c), 505(1) (b), 153A, 109, 504, 505(2) of IPC. In addition to the same, offences under sections 15 and 18 of Unlawful Activities (Prevention) Act, 1967 were included.

6. Subsequent to receipt of complaint relating to the case in Cr.No.18/2022 of Vidhana Soudha Police Station, criminal law was set into motion and thereafter the Investigating Officer has taken up the case for investigation keeping in view the provision of section 173 Cr.P.C. But as per section 167(2) (a) (i) and (ii) Cr.P.C., on completion of investigation, he is required to file the charge sheet against the accused within the stipulated period. As regards the case in Cr.No.18/2022 registered by Vidhana Soudha Police Station relating to the offences under IPC and so also under sections 15 and 18 of Unlawful Activities (Prevention) Act, 1967, investigation requires to be completed within a period of 180 days. In view of non-completion of investigation within the stipulated period, the appellants in these appeals got the benefit of bail, which is in terms of section 167(2) Cr.P.C. as default bail. Accordingly, the appellants who have been

arraigned as accused have been granted interim relief of bail by the Hon'ble Supreme Court of India in W.P.No.(s) (Criminal) No.(s).132/2022 with W.P.(Crl.)No.189/2022 dated 02.08.2022, whereby the Hon'ble Supreme Court of India has observed that the petitioners being arraigned as accused in Cr.No.18/2022 of Vidhana Soudha Police Station had filed applications for bail before the High Court, but, they having not been listed regardless of the pendency of the present writ petitions, the petitioners being arraigned as accused can request the High Court for early hearing of the bail applications. The Hon'ble Supreme Court has held that given the fact that the petitioners have spent almost six months in custody, were directed to be released on bail in another case arising from the same incidence and directed that the petitioners to be released on interim bail, on terms to be fixed by the trial court, till decision of the bail applications before the High Court and directed the matters to be listed on 12th October 2022. Copies of the orders dated 02.08.2022 and 07.09.2022 passed by Hon'ble Supreme Court of India in Writ petition(s) (Criminal) No(s), 132/2022 with W.P.(Crl.) No.189/2022 is produced by the learned counsel Sri.

A. Velan for the purpose of perusal and also consideration and for disposal of the applications before the High Court.

7. Learned counsel Sri. A. Velan has taken us through certain conditions passed by the learned Single Judge in Crl. OP(MD).No.8765 of 2022 relating to the petitioner being arraigned as accused Rahamathullah in respect of Crime No.223/2022 of Thallakulam Police Station, Madurai City, whereby based upon the public apology and so also the apologetic affidavit filed by the petitioner being arraigned as accused, wherein he has affirmed and undertook that he will not henceforth take part or participate or arrange any kind of meetings by commenting against the Hon'ble Judges of the Supreme Court and so also High Courts of India. The Madurai Bench of Madras had imposed certain conditions wherein condition No.13(d) and (f) are as follows:-

"13(d). The petitioner herein shall reside at Madurai City and report before the respondent police every day at 6.00 p.m. until further order.

13(f). The petitioner shall not leave Madurai City limits until further orders. The petitioner shall

surrender his original passport before the Judicial Magistrate, No.II.

and such other conditions were also imposed by the learned Single Judge in the aforesaid petition filed under section 439 Cr.P.C. relating to the case.

8. Whereas, learned counsel Sri. A. Velan has taken up various contentions and seeks for intervention of this Court for setting aside the order passed by the trial Court in Cr.No.18/2022 of Vidhana Soudha Police Station, if not, the petitioners in the aforesaid crime would be the sufferers. Learned counsel also brought to the notice of the Court the order passed by the trial court in Cr.No.18/2022 dated 20.04.2022 on bail application of accused Nos.1 and 2 filed under section 439 Cr.P.C. wherein the accused were granted bail on certain conditions and condition No.5 reads as under:-

5. Accused No.1 and 2 shall appear before the investigation Officer on each Sunday of every month between 9.00 a.m. and 6.00 p.m. till disposal of the bail applications by the Hon'ble High Court of Karnataka.

Apart from condition No.5, such other conditions were also imposed by the trial court relating to Cr.No.18/2022.

9. The contention of learned counsel is that in pursuance of release order, it is not possible for the accused to cooperate with the investigation simultaneously in crimes registered in State of Tamil Nadu and so also in the case in Cr.No.18/2022 registered by Vidhana Soudha Police in State of Karnataka.

10. These are all the contentions made by learned counsel Sri. A. Velan for the appellants/accused and he vehemently contended that unless there is relaxation of certain conditions, it is not possible for the appellants/accused to simultaneously appear before the Investigating agency and cooperate for investigation relating to two crimes which have been registered in two different States.

11. In support of his contention, learned counsel has facilitated certain reliances such as

1. T.T Antony Vs. State of Kerala and others, (2001) 6 SCC 181.

2. Arnab Ranjan Goswami Vs. Union of India and others, (2020) 14 SCC 12.

3. Union of India v. K.A. Najeeb, 2021 (3) SCC 713.

4. Sanjay Chandra V. Central Bureau of Investigation, (2012) 1 SCC 40.

5. Sudesh Kedia V. UOI, 2021(4) SCC 704.

Relying on the above judgments, learned counsel for the appellants seeks for consideration of the grounds urged in these appeals and to allow the appeals and consequently, set aside the impugned order passed by the trial court relating to case No.18/2022 rejecting the applications under section 439 Cr.P.C. wherein the accused are ready to abide by any terms and conditions imposed by this Court.

12. Whereas, learned Spl. PP viz., Sri. P. Prasanna Kumar for respondent No.2 and so also learned SPP-I/Sr. Counsel Sri. Kiran S. Javali for respondent No.1 contended that the case in Cr.No.18/2022 of Vidhana Soudha Police Station having been registered against the appellants being arraigned as accused Nos.1 and 2 and even case in Cr.No.223/2022 registered in the limits of Madurai, Tamil Nadu, whereby the accused have been

granted bail by imposing certain suitable conditions which is reflected in the operative portion of the order passed by the learned Single Judge of State of Tamil Nadu relating to case in Cr.No.223/2022. Therefore, in pursuance of the order passed by the Hon'ble Supreme Court of India in the aforesaid W.P.(Crl).No.132/2022 dated 02.08.2022 and 07.09.2022, the matters are to be disposed of in terms of the directions of the Hon'ble Supreme Court. But the investigation is always the domain vested with the investigating agency to proceed in accordance with law.

13. In the context of the contentions made by the learned counsel Shri A. Velan for appellants / Accused Nos.1 and 2 relating to the case in Cr.No.18/2022 of Vidhana Soudha Police Station of the State of Karnataka, who registered the crime against accused persons for offences under the IPC, 1860 including offences under Sections 15 and 18 of the Unlawful Activities (Prevention) Act, 1967 and having regard to the counter contentions advanced by Shri Kiran S. Javali, SPP-I for Respondent No.1 as well as Shri P. Prasanna Kumar, Spl. PP for Respondent No.2, it requires a decision relating to the bail applications of these appellants / Accused Nos.1 and 2 in

pursuance of the order passed by the Hon'ble Supreme Court of India.

14. The appellants / Accused Nos.1 and 2 in Cr.No.18/2022 of Vidhana Soudha P.S. have already been released by the concerned jail authorities by accepting the release order issued by the Trial Court relating to Accused Nos.1 and 2. Hence, it requires only to dispose of these appeals by considering their bail applications filed under Section 439 of the Cr.P.C. In this regard, it is relevant to refer to Section 167(1)(i) and (ii) of the Cr.P.C., which reads thus:

"167. Procedure when investigation cannot be completed in twenty four hours.--

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall

be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police."

15. The Investigating Agency after completion of the investigation, is required to file a charge-sheet within a period of 180 days for the offences under the Unlawful Activities (Prevention) Act, 1967. But the period of 180 days (6 months) has already been completed. Despite of that period, the Investigating Agency has not laid the charge-sheet against the accused persons in Cr.No.18/2022. But Section 167(2)(a) (i) and (ii) referred to supra indicates that it is a mandatory provision relating to completion of the investigation. But in the

given facts and peculiar circumstances relating to the case in Cr.No.18/2022 of Vidhana Soudha P.S., the Investigating Agency has not laid the charge-sheet against the accused within the stipulated period of 180 days in respect of offences under the Special enactment of the Unlawful Activities (Prevention) Act, 1967. Consequently, the Supreme Court of India having dwelled relating to the provision of Section 167(2) of the Cr.P.C. and has granted the relief of bail to the petitioners / appellants herein, namely Accused Nos.1 and 2 and also directed the Trial Court to fix the condition and further directed to take a decision regarding the bail application of these appellants / Accused Nos.1 and 2 arising out of Cr.No.18/2022 which is pending before this Court.

16. Based upon the complaint made by the complainant who is the gravamen of the incident, criminal law was set into motion and registered a case in Cr.No.18/2022 of Vidhana Soudha P.S. But in Cr.No.18/2022, interim bail has already been granted by the Hon'ble Supreme Court of India, keeping in view the provision of Section 167(2) Cr.P.C. In pursuance of the order passed by the Hon'ble Supreme Court of India, the Trial Court in Cr.No.18/2022 had issued release order by imposing certain suitable conditions. Therefore, in these appeal matters, it

does not arise to dwell in detail for consideration of the contentions made by the learned counsel for the appellants in these appeals and also it does not require for dwelling in detail as regards the allegations made in the case in Cr.No.18/2022 of Vidhana Soudha P.S. registered in the State of Karnataka relating to some derogatory statements made by the appellants / accused.

17. Hence, keeping in view the contentions made by the learned counsel for the appellants in both these appeals and so also the reliance facilitated by the learned counsel in support of his contentions made respectively, it is deemed appropriate to state that there is substance in the contention made by the learned counsel for seeking intervention of the order passed by the Trial Court in Crl.Misc.No.4864/2022 dated 21.05.2022 relating to the petition of the accused Rahamathullah S/o. Rizvaulla and the order passed by the Trial Court in Crl.Misc.No.6076/2022 dated 11.07.2022 relating to the accused namely Jamal Mohamed Usmani @ Jamal Mohamad.

18. Therefore, the appellants / Accused Nos.1 and 2 in Cr.No.18/2022 of Vidhana Soudha P.S., already having been granted the relief of bail by the Hon'ble Supreme Court of India

and also having been released by the jail authorities concerned from where they are housed, we are of the opinion that the impugned orders passed by the Trial Court relating to the case in Cr.No.18/2022 of Accused Nos.1 and 2, requires intervention. Consequently, the case in CrI.A.No.1347/2022 and the case in CrI.A.No.1322/2022 are hereby allowed in terms of the aforesaid reasons.

19. Accordingly, we proceed to pass the following:

ORDER

The appeals preferred by respective appellant / accused in CrI.A.No.1347/2022 and CrI.A.No.1332/2022 under Section 21 of the NIA Act are hereby allowed. Consequently, the petitions filed by Accused Nos.1 and 2 under Section 439 Cr.P.C. are restored. However, the impugned order passed by the Trial Court in CrI.Misc.No.6076/2022 dated 11.07.2022 and in CrI.Misc.No.4864/2022 dated 21.05.2022 relating to the case in Cr.No.18/2022 of Vidhana Soudha P.S., Bengaluru, are hereby set aside. Consequent upon setting aside the impugned order passed by the Trial Court, the bail petitions filed by the appellants/Accused Nos.1 and 2 under Section 439 r/w 167(2) of Cr.P.C. are hereby allowed subject to the following conditions:

i) Appellants / Accused Nos.1 and 2 shall execute a personal bond for Rs.1,00,000/- each with likesum two sureties to the satisfaction of the Trial Court in Cr.No.18/2022 within a period of 15 days from the date of this order.

ii) Appellants / Accused Nos.1 and 2 shall appear before the court of law in Cr.No.18/2022 without fail on all hearing dates.

iii) Appellants / Accused Nos.1 and 2 shall co-operate with the Investigating Agency during the course of investigation.

iv) Appellants / Accused Nos.1 and 2 shall not indulge in any criminal activities henceforth.

v) Appellants / Accused Nos.1 and 2 shall appear before the Investigating Agency during the course of investigation as and when required.

vi) Appellants / Accused Nos.1 and 2 shall not tamper or hamper the case of the prosecution witnesses.

Learned counsel Shri A. Velan for appellants / Accused Nos.1 and 2 submits that the Accused Nos.1 and 2 have already executed personal bonds for a sum of Rs.1,00,000/- and two sureties for the likesum. The same may be considered and

accordingly he seeks an observation and direction to the Trial Court in Cr.No.18/2022.

However, appellants / Accused Nos.1 and 2 shall approach the Trial Court in Cr.No.18/2022 of Vidhana Soudha P.S. and furnish the sureties in compliance of the conditions imposed by this Court in these appeals relating to consideration of their bail applications filed under Section 439 Cr.P.C. But accepting their earlier sureties with an affidavit filed by the respective sureties or insisting fresh sureties in pursuance of the order passed by this Court in these appeals, is the discretionary power vested with the Trial Court in Cr.No.18/2022, in accordance with law. Accordingly ordered.

Sd/-
JUDGE

Sd/-
JUDGE

*mn/- / KS