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Crl.A.Nos.1000, 1001, 771 and 772 of

2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **24.11.2023**

PRONOUNCED ON : **12.12.2023**

CORAM :

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.1000,1001, 771 and 772 of 2022

and

Crl.M.P.Nos.13622 and 13624 of 2022

Mohamed Rifas @ Mohamed Rigbas

... Appellant in Crl.A.No.1000 of 2022

Liyakath Ali

...Appellant in Crl.A.No.1001 of 2022

Rizwan Mohammed

...Appellant in Crl.A.No.771 of 2022

Sajith Ahmed

...Appellant in Crl.A.no.772 of 2022

Versus

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

... Respondent in all the appeals.

PRAYER in Crl.A.No.1000 of 2022 : Criminal Appeal has been filed under Section 21(4) of National Investigation Agency Act, 2008, to set aside the order passed in Crl.M.P.No.213 of 2022 dated 05.07.2022 and



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consequent remand of the appellant on 01.08.2022 on the file of the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases, Chennai at Poonamallee, Chennai.

PRAYER in Crl.A.No.1001 of 2022 : Criminal Appeal has been filed under Section 21(4) of National Investigation Agency Act, 2008, to set aside the order passed in Crl.M.P.No.214 of 2022 dated 05.07.2022 and consequent remand of the appellant on 01.08.2022 on the file of the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases, Chennai at Poonamallee, Chennai.

PRAYER in Crl.A.No.771 of 2022 : Criminal Appeal has been filed under Section 21(4) of National Investigation Agency Act, 2008, to set aside the order passed in Crl.M.P.No.216 of 2022 dated 05.07.2022 on the file of the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases, Chennai at Poonamallee, Chennai.

PRAYER in Crl.A.No.772 of 2022 : Criminal Appeal has been filed under Section 21(4) of National Investigation Agency Act, 2008, to set aside the order passed in Crl.M.P.No.215 of 2022 dated 05.07.2022 and on the file of the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases Chennai at Poonamallee, Chennai.



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For Appellants : Mr.I.Abdul Basith
in all Crl.As.

For Respondent : Mr.R.Karthikeyan
in all Crl.As. Special Public Prosecutor
for NIA cases

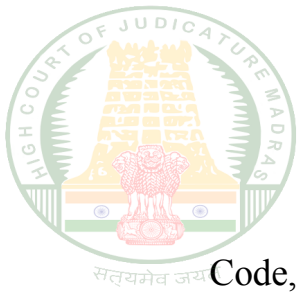
COMMON JUDGMENT

(Order of the Court was delivered by **SUNDER MOHAN, J.**)

All the above appeals have been filed challenging the order of cancellation of bail granted to the appellants. All the appellants are accused in C.C.No.1 of 2021 on the file the Special Court under the National Investigation Agency Act, 2008, Sessions Court for Exclusive Trial for Bomb Blast Cases, Chennai at Poonamallee, Chennai. Though the bails granted to them were cancelled for different reasons, they are taken up together.

2. The brief facts leading to the filing of the above appeals are as follows:

(a) The appellant in Crl.A.No.1000 of 2022 (hereinafter referred to as Mohamed Rifas/A2) and the appellant in Crl.A.No.1001 of 2022 (hereinafter referred to as Liyakath Ali/A8) were arrested on 02.04.2018 in connection with Crime No.46 of 2018, on the file of Keelakarai Police Station for offences under Sections 153 A and 120 B of the Indian Penal



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Code, Sections 15 (c), 17, 18, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as UA(P) Act, 1967), and Sections 25 (I) (a) of the Arms Act, 1959.

(b) Mohamed Rifas/A2 filed Crl.M.P.No.1292 of 2018, seeking Statutory Bail under Section 167 (2) of Cr.P.C. Liyakath Ali/A8, filed similar bail application in Crl.M.P.No.1294 of 2018. Both applications were allowed by orders dated 05.07.2018.

(c) Subsequently, the respondent took up the investigation and re-registered an FIR in RC.01/2019/NIA/DLI, under the very same provisions. After investigation, the respondent filed a Final Report before the Special Court under the National Investigation Agency Act, 2008, Poonamallee at Chennai, dated 23.01.2021 for the offences under Sections 120B, 153A, 121A, and 122 of the Indian Penal Code, Sections 13 and 18 of the UA (P) Act, and Section 25 (1) (a) of the Arms Act, 1959.

(d) The respondent filed an application for cancellation of bail granted to Mohamed Rifas/A2, on the ground that he had suppressed the fact that he was a Sri Lankan national and obtained the bail in Crl.M.P.No.213 of 2022 under Section 167(2) of Cr.P.C.



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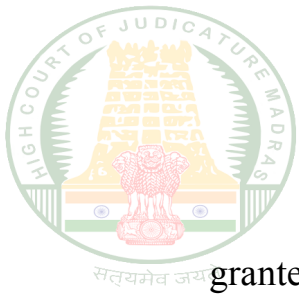


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(e) The prosecution relied upon an FIR registered by Keelakarai Police Station in Crime No. 188 of 2019, dated 29.11.2019, registered for the offences under Sections 468, 471 of the IPC, Section 14 of the Foreigners Act, 1946, Section 2(1)(b) of the Citizenship Act, 1955 and Section 6 (a) of the Passport Act, 1967, and Section 3(a), 6 (a) of the Passport (Entry into India) Rules. The Trial Court allowed the application filed by respondent on the ground that bail cannot be granted to a Non-Indian citizen as per the provisions of 43-D (7) of the UA (P) Act, 1967. It held that since the said Mohammed Rifas is a foreign national, he was not entitled to bail and therefore cancelled the bail.

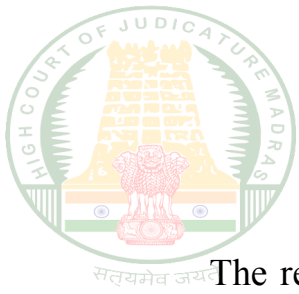
(f) As regards Liyakath Ali/A8, the respondent filed Crl.M.P.No.214 of 2022 dated 05.07.2022, seeking cancellation of bail granted to him on the ground that the said Liyakath Ali was involved in another case investigated by the National Investigation Agency (hereinafter referred to as NIA) and also a case in Crime No.2012 of 2015 on the file of D.1, Triplicane, Police Station. The learned trial Judge found that since Liyakath Ali/A8, has misused his liberty



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granted to him and observing that he may indulge in similar activity, allowed the application filed by the respondent for cancellation of bail.

3(a). The appellants in Crl.A.Nos.771 and 772 of 2022, (hereinafter referred to as Rizwan Mohammed/A10 and Sajith Ahmed/A9) stand on a different footing. Crl.M.P.Nos.216 and 215 of 2022, were filed to cancel the bail granted to A10 and A9 respectively. The appellants were initially granted bail on merits. Rizwan Mohammed/A10 was arrested on 02.04.2018 and released by an order dated 27.04.2018, by the learned Principal District and Sessions Judge, Ramanathapuram in the Crl.M.P.No.889 of 2018, on the ground that material witnesses were examined the main accused were arrested, and they were no previous cases pending against the said Mohammed Rizwan/A10. Similarly, Sajith Ahmad/A9 was arrested on 02.04.2018/16.04.2018 and released on bail by an order dated 02.07.2018, passed by the learned Principal District and Sessions Judge, Ramanathapuram, in the Crl.M.P.No.1230 of 2018 on the ground that material witnesses have been examined, he had no previous case and he was in judicial custody from 16.04.2018, for more than 77 days.



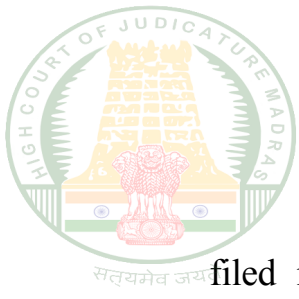
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The respondent in their petition to cancel the bail had pleaded that after granting bail, A10 was involved in Crime No.875 of 2021, for the offences under Sections 294 (b), 341, 352, 391, 392 of the Indian Penal Code, and Sajith Ahmed/A9, was involved in Crime Nos.874 and 875 of 2021; that Crime No.874 of 2021 was registered for the offences under Sections 294 (b) 341, 353 of the IPC and 3(1) of the TNPPDL Act, on the file of Muthupettai Police Station.

3(b). The Trial Court found that the appellants/A10 and A9, had misused their liberty and therefore, cancelled the bail granted by an orders dated 05.07.2022 in Crl.M.P.Nos.216 and 215 of 2022 for A10 and A9, respectively.

3(c). Aggrieved by the aforesaid orders, the appellants have filed the filled the above appeals.

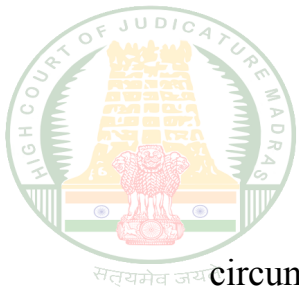
4(a). The learned counsel for the appellants submitted that the bail orders were passed in the year 2018; that for two of the appellants, the Special Court had granted bail under section 167(2) of the Cr.P.C., and for two others on merits; that petitions for cancellation of the bail were



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filed nearly four years after the grant of bail; that the grounds for cancellation had no nexus; that grounds for cancellation of bail are irrelevant and in any case they cannot be the basis for curtailing the liberty of the appellants. The learned counsel further submitted that, as regards Sajith Ahmed/A9 and Mohammed Rizwan/A10, the only ground is that they were involved in cases after the grant of bail, and those cases had nothing to do with the offences under Section UA (P) Act, 1967 and it relates to the alleged acts during the “Vinayagar Chaturthi” celebration; that in those cases, the appellants have been falsely implicated, and in any event, it cannot be said that the appellants indulged in similar activity.

4(b).The learned counsel further submitted that it is the case of the respondent that while granting bail to the appellants/A9 and A10, the learned Principal District and Sessions Judge, Ramanathapuram, did not consider the restriction under Section 43-D (5) of the UA (P) Act; and that this arguments cannot be countenanced since the respondent has not filed any appeal challenging the said order; that in any case, the Court has no power to review its own order in the absence of any supervening



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circumstances to cancel the bail and relied upon the Judgment of the Hon'ble Supreme Court in SLP No.6855 – 6857 of 2013 in ***Abdul Basit Vs. Abdul Kadir Choudhary*** reported in ***(2014) 10 SCC 754*** in support of his submission.

4(c). As regards the appellants in Crl.A.Nos.1000 and 1001 of 2022 (Mohamed Rifas/A2 and Liyakath Ali/A8), the learned counsel submitted that the bail was granted under 167(2) of Cr.P.C; that ground for cancellation of bail against A2 is that he is a Sri Lankan national and that the said averment is based on an FIR that was registered only in the year 2019. The said FIR itself is false, and it is based on the alleged confession made by the appellant/A2 to the Village Administrative Officer stating that he belonged to Sri Lanka. Though the FIR was registered on 29.11.2019 by Keelakarai Police Station, Ramanathapuram District, no charge sheet has been filed so far. The respondent has no other material to prove that he is a Sri Lankan national and in any case, the grounds for grant of bail and cancellation of bail are different, and hence, that cannot be the basis for cancellation of bail.



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4 (d). As regards the appellant in Crl.A.No.1001 of 2022 (Liyakath Ali/A8), the learned counsel submitted that the fact that he was involved in another case cannot be the basis for cancellation since the said case was registered in the year 2020 by the respondent themselves. The respondent was therefore aware of this, and hence the cancellation of bail filed two years after the registration has no nexus and cannot be the basis for cancellation, and prayed for allowing of all the above appeals.

5. Mr. R. Karthikeyan, learned Special Public Prosecutor, submitted that all the accused have misused their liberty in various ways; that the accused, Mohammed Rifas/A2, had suppressed the fact that he is a Sri Lankan national and obtained bail, which he is not entitled to under Section 43-D (7) of UA(P) Act; that an FIR registered by Keelakarai Police Station, Ramanathapuram, is pending against him; therefore, since he had suppressed the said fact, and the cancellation of bail granted to him is justified. Likewise, in all other cases, the appellants have misused their liberty, and in view of the supervening circumstances, the bail granted to them deserved to be cancelled, and hence, it was rightly cancelled. That apart, the learned Special Public Prosecutor



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submitted that, as regards the appellants in Crl.A.Nos.771 and 772/A10 and A9, the bails were granted on merits without taking into consideration the restrictions under Section 43- D (5) of the UA (P) Act, and for that reason also bail deserved to be cancelled.

6. We have heard the learned counsel for the appellants and the learned Special Public Prosecutor for NIA cases. All the accused were arrested in connection with Crime No.46 of 2018, registered on the file of Keelakarai Police Station. They were all released on bail in the year 2018 itself. The respondent re-registered the FIR on 12.01.2019 and, on investigation filed the final report before the Special Court in CC.No.01 of 2021. The allegation against all the accused is that they entered into a conspiracy against the Government at different places in Tamil Nadu for disrupting communal harmony, to cause enmity and hatred between different religions, and for that purpose, they associated themselves through Facebook, shared materials on violent *jihadi* ideology, and formed a WhatsApp group with the intention of furthering violent extremist ideology and sharing pro-*jihadi* materials. They were in

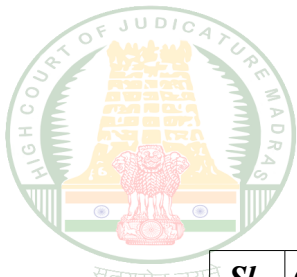


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all possession of materials that established their conspiracy to commit terrorism and to establish Islamic rule in India by unlawful means.

7. The issue involved in the instant case is whether the Trial Court was justified in cancelling the bail granted to the appellants for the reasons stated in the order. Let us now analyse the grounds on which the bail was granted and thereafter cancelled by the Trial Court. The following tabular column below would explain the facts in a nutshell.

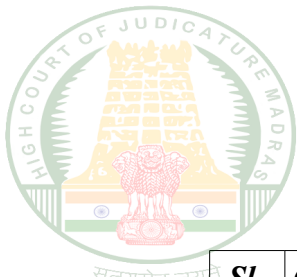
<i>Sl. No.</i>	<i>Crl. Appeal No.</i>	<i>Name of the Accused</i>	<i>Date of arrest</i>	<i>Bail Order</i>	<i>Reasons for cancellation</i>
1.	771 of 2022	Rizwan Mohammed (A10)	02.04.2018	Bail granted in Crl.M.P.No. 889 of 2018 dated: 27.04.2018 by the learned Principal District and Sessions Judge, Ramanathapuram, on the ground that witnesses have been examined and no previous case against the appellant.	that the appellant had misused his liberty by involving himself in another case in Crime No.875 of 2021 under Sections 294 (b) 341, 352 391 and 392 of IPC.
2.	772 of 2022	Sajith Ahamed (A9)	02.04.2018	Bail granted in Crl.M.P.No. 1230 of 2018 dated 02.07.2018 by the learned Principal District and Sessions Judge,	that the accused was involved in Crime Nos. 874 and 875 of 2021 and registered for the offences under Sections



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Sl. No.	Crl. Appeal No.	Name of the Accused	Date of arrest	Bail Order	Reasons for cancellation
				Ramanathapuram on the ground that witnesses have been examined, the appellant was in custody for more than 77 days.	294 (b) 341, 353 of the IPC, 3(1) of TNPPDL Act [However, it is stated in the order of the Trial Court that the appellant was charged for offences under Section 25 (1-B) (b) of the Arms Act, 1959, in Crime No.874 of 2021]
3.	1000 of 2022	Mohammed Rifas (A2)	12.04.2018	Bail granted in Crl.M.P.No. 1292 of 2018 under Section 167 (2) of CrI.P.C dated 05.07.2018 by the learned Principal District and Sessions Judge, Ramanathapuram.	that the appellant is a Sri Lankan National and he had suppressed the same before the Court and that as per the 43- D (7) a Sri Lankan National is not entitled to bail for the offence under the UA (P) Act, 1967.
4	1001 of 2022	Liyakath Ali (A8)	12.04.2018	Bail granted in Crl.M.P.No. 1294 of 2018 dated 05.07.2018 by the learned Principal and District Sessions Judge	that he was involved in another case registered by the respondent in R.C.No.2 of 2020/NIA/DLI



Sl. No.	Crl. Appeal No.	Name of the Accused	Date of arrest	Bail Order	Reasons for cancellation
				Ramanathapuram under Section 167 (2) of CrI.P.C.	dated 21.01.2020 for the offences under Sections 465, 468, 471 r/w 120(B) of IPC, 13 and 18 of UA(P) Act, 1967. He had suppressed his involvement in Crime No. 2012 of 2015 registered by D1, Triplicane, Police Station, for the offences under Sections 147, 148, 120 (B) and 302 of IPC

8. From the above tabular column, it would be clear that all the accused were arrested in April 2018 and released on bail in the months of either June or July 2018. It is well settled that considerations for the grant of bail and for the cancellation of bail are different. In this regard, it is useful to refer to the observation of the Hon'ble Supreme Court in ***Dolat Ram and others Vs. State of Haryana*** reported in (1995) 1 SCC 349, wherein the Hon'ble Supreme Court has stated as follows:

“4. Rejection of bail in a non-bailable case at the



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initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis.

Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already



granted.”

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However, in a case where bail has been erroneously granted, it is for the superior Court to set aside the said bail order and the Court that granted the bail has no power to set aside the same in view of the bar under Section 362 of Cr.P.C. The observations made by the Hon'ble Supreme Court in *Abdul Basit Vs. Abdul Kadir Choudhary* reported in (2014) 10 SCC 754, are extracted herein for better understanding:

15. The scope of this power to the High Court under Section 439(2) has been considered by this Court in Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] .

16. In Gurcharan Singh case [(1978) 1 SCC 118 : 1978 SCC (Cri) 41] this Court has succinctly explained the provision regarding cancellation of bail under the Code, culled out the differences from the Code of Criminal Procedure, 1898 (for short “the old Code”) and elucidated the position of law vis-à-vis powers of the courts granting and cancelling the bail. This Court observed as under: (SCC pp. 123-24, para 16)

“16. Section 439 of the new Code confers special powers on the High Court or Court of Session regarding



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bail. This was also the position under Section 498 CrPC of the old Code. That is to say, even if a Magistrate refuses to grant bail to an accused person, the High Court or the Court of Session may order for grant of bail in appropriate cases. Similarly under Section 439(2) of the new Code, the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. In the old Code, Section 498(2) was worded in somewhat different language when it said that a High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody. In other words, under Section 498(2) of the old Code, a person who had been admitted to bail by the High Court could be committed to custody only by the High Court. Similarly, if a person was admitted to bail by a Court of Session, it was only the Court of Session that could commit him to custody. This restriction upon the power of entertainment of an application for committing a person, already admitted to bail, to custody, is lifted in the new Code under Section 439(2). Under Section 439(2) of the new Code a High Court may commit a person released on bail under Chapter XXXIII by any court including the Court of Session to custody, if it thinks appropriate to do so. It must, however, be made clear that a Court of Session cannot cancel a bail which has already been granted by the High Court unless new circumstances arise during the progress of the trial after an accused person has been admitted to bail by the High Court. If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that Court. The State may as well approach the High Court being the superior court under Section 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the



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Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-à-vis the High Court.”

*17. In this context, it is profitable to render reliance upon the decision of this Court in *Puran v. Rambilas* [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] . In the said case, this Court held (SCC p. 345, para 11) that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In *Narendra K. Amin v. State of Gujarat* [(2008) 13 SCC 584 : (2009) 3 SCC (Cri) 813] , the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled the bail granted to the appellant in exercise of power under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while*



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affirming the principle laid down in Puran case [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] has observed that when irrelevant materials have been taken into consideration by the court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate court and that no review would lie under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same court.

18. *Reverberating the aforesaid principle, this Court in the recent decision in Ranjit Singh v. State of M.P. [(2013) 16 SCC 797 : (2014) 6 SCC (Cri) 405] has observed that: (SCC p. 806, para 19)*

“19. ... There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court.”

19. *Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having*



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surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the court superior to the court which granted the bail and not by the same court.

20. In the instant case, the respondents herein had filed the criminal miscellaneous petition before the High Court seeking cancellation of bail on grounds that the bail was obtained by the petitioners herein by gross misrepresentation of facts, misleading the court and indulging in fraud. Thus, the petition challenged the legality of the grant of bail and required the bail order to be set aside on ground of it being perverse in law. Such determination would entail eventual cancellation of bail. The circumstances brought on record did not reflect any situation where the bail was misused by the petitioner-accused. Therefore, the High Court could not have entertained the said petition and cancelled the bail on grounds of it being perverse in law.

21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus



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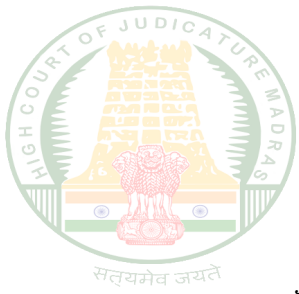
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officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.

...

26. In the instant case, the order for bail in the bail application preferred by the accused-petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the petitioner-accused. Even though the cancellation of bail rides on the satisfaction and discretion of the court under Section 439(2) of the Code, it does not vest the power of review in the court which granted bail. Even in the light of



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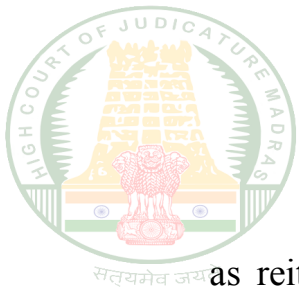
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fact of misrepresentation by the petitioner-accused during the grant of bail, the High Court could not have entertained the respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition.

9. Applying the aforesaid principles, let us analyse the facts of the instant case.

9(a). In Crl.A.No.771 of 2022, it is seen that the appellant/A10 was granted bail on merits. It is no doubt true that the learned Trial Judge has not considered Section 43-D (5) of UA(P) Act, 1967, while granting bail. Though the respondent has raised this point in their objections, this was not a ground for the cancellation of bail. The accused is said to be involved in offences under Sections 294(b), 341, 352, 391 and 392 of the IPC in Crime No. 875 of 2021, after he was granted bail. The reading of the FIR would show that the appellant, along with two others had confronted certain persons who had taken the idol of Lord Vinayaga in a procession. The said FIR was registered on 10.09.2021. The respondent has not stated the stage of the said case. Be that as it may. The said FIR relates to an activity that cannot be said to be similar to the one alleged against the appellant/A10. It is well settled,



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as reiterated by the Hon'ble Supreme Court in several cases, that once bail is granted, it cannot be cancelled in a mechanical manner unless there is an attempt to interfere in the course of the administration of justice or an attempt to evade due process of law. However, the registration of the FIR, in our view, does not warrant the cancellation of bail, considering the nature of the allegations in the FIR and also the time taken by the respondent to move the cancellation of bail after the registration of the FIR. In any case, we are of the view that the registration of the FIR would not affect the prosecution and would not amount to interference in the course of the trial in the instant case. Therefore, we hold that the order cancelling the bail that has been in force since 2018 is unwarranted and disproportionate to the alleged offences committed by the appellant while he was on bail.

9(b). The appellant/A9's case is also similar to A10's case, except for the fact that another FIR is pending against this appellant for the offences under Sections 341, 294(b), 353, and 3 (1) of the TN PPDL Act. The FIR does not suggest that the offences under the Arms Act were



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registered. However, it is not known as to how the Trial Court recorded in the order that the offence under Section 25 (1-B) (b) of the Arms Act, 1959, was registered against the appellant in the said Crime No.874 of 2021. Be that as it may. The allegation in the said FIR also relates to the alleged damage caused to an Innova car belonging to a private person while the idol of Lord Vinayaga was taken in a procession. Thus, the appellant is said to be involved in Crime Nos.874 and 875 of 2021, wherein the allegations are similar. Here also, for the reasons stated in the Crl.A.No.771 of 2022 referred above, we are of the view that the Trial Court was not justified in cancelling the bail that was in force from 2018 onwards. The respondent has not made out any strong case of interference in the course of the trial so as to deny the liberty of the person who is on bail.

9(c). As far as the appellant in Crl.A.No.1000 of 2022 is concerned, as stated in tabular column referred above, it is seen that the bail was cancelled on the ground that the appellant is a Sri Lankan national and therefore, the bail ought not to have been granted in view of Section 43-D (7) of the UA(P) Act, 1967.



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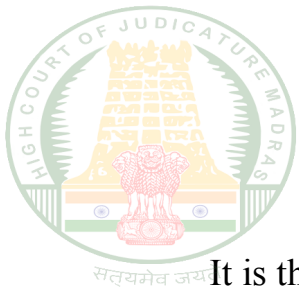
9(d). We are of the view that the bail ought not to have been cancelled for the following reasons:-

(i) 43-D (7) of the UA(P) Act, 1967, stipulates that bail cannot be granted to a person who is not an Indian citizen and has entered the country unauthorisedly or illegally. The said provision reads as follows:

“(7) Notwithstanding anything contained in sub - sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”

It is not as if that there is no discretion given to the Court. The Court can grant bail even to a person who is not a citizen under extraordinary circumstances.

(ii) Further, the Trial Court has no power to review its own order in terms of the Judgment in ***Abdul Basit's case*** referred to above. The respondent ought to have filed an appeal against the said order.



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It is the case of the respondent that since the statutory period of limitation had expired for filing an appeal, they were constrained to file a petition for a cancellation of the bail. We are unable to countenance this submission firstly because the inability to file an appeal cannot be a ground to file cancellation of bail petition.

(iii) That apart, the version of the respondent that the appellant is a Sri Lankan national and had entered the country illegally is based on an FIR registered by Keelakarai Police Station in Crime No. 188 of 2019, which in turn was registered on the alleged confession given by the appellant to the Village Administrative Officer. Admittedly, there is no Final Report in the said FIR. The respondent also has no other independent material to establish that the appellant is a Sri Lankan national, and that he entered the country illegally.

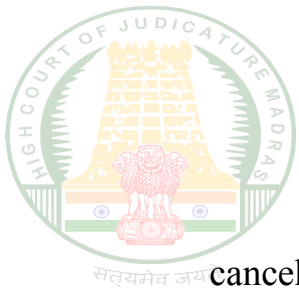
(iv) Even assuming that the appellant is a Sri Lankan national, as stated earlier, the appellant has been granted bail in the year 2018 and his liberty cannot be curtailed after four years, merely because there is an FIR that was registered in 2019. The respondent had also not filed the petition



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for cancellation of bail immediately after the registration of the FIR. The instant cancellation of bail is filed three years after the registration of the FIR in Crime No. 188 of 2019. Liberty cannot be curtailed in such a fashion. The prosecution has not explained the reasons for the delay in their affidavit filed in support of cancellation. For the aforesaid reasons, we are of the view that the order cancelling the bail is unjustified.

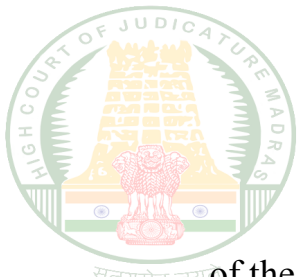
9(e). As regards Crl.A.No.1001 of 2022, the bail was cancelled as stated earlier since the appellant had not stated about his earlier involvement in a case registered by the D1, Triplicane, Police Station under Section 302 of the IPC. It is also the case of the respondent that the appellant/A8, was involved in another case registered by the NIA on 21.01.2020 in RC No. 2 of 2020. As regards the first reason, it is seen that the pendency of the FIR for the offence under Sections 302 of the IPC would hardly make a difference while considering a bail application under 167 (2) of the Cr.P.C, which arises out of an indefeasible right of the accused. Therefore, that cannot be a reason for cancellation. As regards the second reason, namely that the appellant is involved in another case in RC.No.2 of 2020 by the respondent, it is seen that the respondent has registered the said FIR as early as on 21.01.2020. The



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cancellation of bail was filed in April 2022. The respondent has not explained why they had waited for nearly 2 years to file the cancellation of bail after the registration of the FIR. The order of bail cannot be cancelled in a mechanical manner. As held in several cases, the reasons must be cogent, and the accused must have interfered in the administration of justice in any manner. In the instant case, the respondent has not established the said fact. They relied upon an FIR registered in January 2020, to move a cancellation of the bail petition in April 2022. There is no nexus, and therefore, on that ground, the bail cannot be cancelled.

10. The learned Special Public Prosecutor relied upon the Judgement of the Honourable Supreme Court in *State Vs. T.Gangi Reddy* reported in (2023) 4 SCC 253, wherein the Hon'ble Supreme Court held that even if bail was granted under Section 167(2) of Cr.P.C, the prosecution can move cancellation of bail if there is special ground made out for the commission of a non-bailable offence. In the instant case, the prosecution has not made out any special or strong ground for cancellation of bail, and hence, the respondent's reliance on the Judgment



Crl.A.Nos.1000, 1001, 771 and 772 of

2022

of the Hon'ble Supreme Court *cited supra* is misplaced.

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11. We are of the opinion that what would amount to misuse of liberty or suppression of material facts warranting cancellation of bail would depend on the facts and circumstances of the case. In the instant case the grounds raised by the prosecution for cancellation, in our considered view for the reasons recorded earlier do not warrant an order cancelling the bail. However, in the interest of justice, we deem it appropriate to impose stringent conditions so that the investigation officer ensures the liberty is not misused by the appellants.

12. Therefore, for the aforesaid reasons, we are of the view that all the Criminal Appeals deserve to be allowed. Hence, Crl.A.Nos.1000, 1001, 771 and 772 of 2022 are allowed and consequently, the impugned orders cancelling the bail, are set aside. Consequently, the connected miscellaneous petitions are closed.

13. Hence, the above appeals are allowed on the following conditions:



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Crl.A.Nos.1000, 1001, 771 and 772 of

2022

(i) Each of the appellant shall execute a bond and furnish two sureties for a likesum of Rs.50,000/- [Rupees Fifty Thousand only] each and one of the sureties should be a blood relative to the satisfaction of the learned Judge, Special Court under the National Investigation Agency Act, 2008 (Sessions Court for Exclusive Trial of Bomb Blast Cases) Chennai at Poonamallee, Chennai - 600 056;

(ii) The appellants shall appear and sign before the respondent every Monday at 10.30 a.m., and before the Trial Court on all hearing dates until further orders;

(iii) The appellants shall surrender their Passports (if any) before the trial court and if they do not hold a passport, they shall file an affidavit to that effect in the form that may be prescribed by the trial court. In the latter case the trial court will if they have reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify thier records and send a reply within three weeks. If they fail to reply within the said period, the trial court will be entitled to act on the



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2022

statement of the appellants;

(iv)The appellants shall not tamper with evidence and indulge in any other activities which are in the nature of preventing the investigation process;

(v) The appellants shall inform the trial court the address where they reside and if changes their address, it should be informed to trial court;

(vi) The appellants shall use only one mobile phone during the time they remain on bail and shall inform the trial court thier mobile numbers;

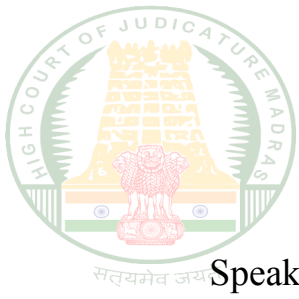
(vii)The appellants shall also ensure that thier mobile phones remain active and charged at all times so that they remain accessible over phone throughout the period they remain on bail;

(viii)The trial court will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out.

[S.S.S.R.,J.]

[S.M.,J.]

12.12.2023



Crl.A.Nos.1000, 1001, 771 and 772 of

2022

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

dk

Note: Issue Order Copy today (12.12.2023).

Copy to :-

1. The Sessions Court for Exclusive Trial for Bomb Blast Cases,
Poonamalle
Chennai – 600 056.
2. The Inspector of Police,
National Investigation Agency,
Chennai.
3. The Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



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2022

Crl.A.Nos.1000, 1001, 771 and 772 of

S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

Pre Delivery Common Judgment in
Crl.A.Nos.1000, 1001, 771 and 772 of 2022
and
Crl.M.P.Nos.13622, 13624 of 2022

Dated: 12.12.2023



Crl.A.Nos.1000, 1001, 771 and 772 of

2022

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Crl.A.Nos.1000, 1001, 771 and 772/2022

S.S.SUNDAR, J.

AND

SUNDER MOHAN, J.

[Order of the Court was made by S.S.SUNDAR, J.,]

After pronouncement of the judgment in the above criminal appeal, Mr.R.Karthikeyan, learned Special Public Prosecutor [NIA] produced before this Court G.O.[1D] No.637 dated 31.12.2019, stating that the appellant should reside in the Special Camp identified and located by the District Collector of Tiruchirappalli District in the event of his release from prison till his deportation.

2.Considering the submission made by the learned Special Public Prosecutor [NIA], it is made clear that the common judgment passed in the above criminal appeals is subject to the order passed in the Government Order in G.O.[1D] No.637 dated 31.12.2019 and liberty is given to the appellant to challenge the said Government Order.

[S.S.S.R., J] [S.M., J]
12.12.2023

AP

Internet : Yes