

ITEM NO.1

COURT NO.5

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s)for Special Leave to Appeal (CrI.)No(s).10039-10040/2016

(Arising out of impugned final judgment and order dated 06-03-2015 in CRLP No. 4084/2015 06-03-2015 in CRLP No. 5073/2015 passed by the High Court of Judicature at Madras)

A.G. PERARIVALAN

Petitioner(s)

VERSUS

THE STATE OF TAMIL NADU, THROUGH
SUPERINTENDENT OF POLICE AND ANR.

Respondent(s)

(IA No. 53784/2021 - GRANT OF BAIL
IA No. 73470/2017 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES IA No. 140310/2021 - PERMISSION TO FILE
ADDITIONAL DOCUMENTS/FACTS/ANNEXURES IA No. 118421/2017 -
SUSPENSION OF SENTENCE)

Date : 09-03-2022 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Gopal Sankaranarayanan, Sr. Adv.
Mr. K. Paari Vendhan, AOR
Mr. Prabu Ramasubramanian, Adv.
Mr. Raghunatha Sethupathy. B., Adv.
Ms. Priya. R., Adv.
Ms. Shivani Vij, Adv.

For Respondent(s) Mr. Tushar Mehta, Ld. SG
Mr. K. M. Nataraj, ASG
Mr. T. A. Khan, Adv.
Ms. Kriti Dua, Adv.
Ms. Rekha Pandey, Adv.
Mr. Ashok Panigrahi, Adv.
Ms. Vanshaja Shukla, Adv.
Mr. Arvind Kumar Sharma, AOR
Mr. B. V. Balaram Das, AOR

Mr. Rakesh Dwivedi, Sr. Adv.
Mr. V. Krishnamurthy, Sr. Adv./AAG
Dr. Joseph Aristotle S., AOR

Mr. Eklavya Dwivedi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

IA No. 53784/2021

The petitioner was convicted for committing offences under the following provisions:

Sections 120-B r/w 302, 326, 324, 201, 212 and 216 IPC;

Sections 3,4 & 5 of the Explosive Substances Act, 1908;

Section 25 of the Arms Act, 1959;

Section 12 of the Passport Act, 1967;

Section 14 of the Foreigners Act, 1946;

Section 6(1-A) of the Wireless Telegraphy Act, 1933;

Sections 3, 3(3), 4, and 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA Act");

Sections 109 & 302 IPC (16 counts), 109 & 326 IPC (13 counts), 109 & 324 IPC (6 counts);

Section 6(1-A) of the Wireless Telegraphy Act, 1933 and Section 109 IPC;

Section 12 of the Passport Act, 1967;

Section 4(3) punishable under Section 4(1) of the TADA Act r/w Section 34 IPC.

He was sentenced to death for offences punishable under Sections 120-B read with 302 of IPC, Sections 3, 4 & 5 of the Explosive Substances Act, 1908, Section 25 of the Arms Act, 1959, Section 12 of the Passport Act, 1967, Section 14 of the Foreigners Act, 1946, Section 6(1-A) of the Wireless Telegraphy

Act, 1933, Sections 3, 4, and 5 of TADA Act, and Sections 109 & 302 IPC (16 counts).

He was sentenced to life imprisonment under Section 3(3) of the TADA Act and Section 4(3) punishable under Section 4(1) of the TADA Act r/w Section 34 IPC. He was further sentenced to undergo (a) rigorous imprisonment for three years under Section 109 & 326 IPC (13 counts), (b) rigorous imprisonment for one year under Section 109 & 324 IPC (6 counts), (c) rigorous imprisonment for two years under Section 6(1-A) of the Wireless Telegraphy Act, 1933 and Section 109 IPC, and (d) rigorous imprisonment for three months under Section 12 of the Passport Act, 1967.

The conviction and death sentence was confirmed by the Supreme Court. Later, a writ petition was filed by the applicant in the High Court of Madras for commutation of the sentence, which was transferred to this Court. By a judgment dated 18.02.2014 in T.C. (Cr1.) No.1 of 2012 reported in 2014 (4) SCC 242, sentence of death imposed on the applicant was commuted to life imprisonment.

These Special Leave Petitions have been filed against the order(s) passed by the High Court on 06.03.2015 in CRL.O.P.S.R. No. 4084/2015 and CRL.O.P. No. 5073/2015. During the pendency of these special leave petitions, the mercy petition filed by

the applicant was considered and the decision of the Cabinet was placed before the Governor of Tamil Nadu. As there was delay in the Governor arriving at a decision, we had inquired from the Additional Advocate General appearing for the State of Tamil Nadu as to the reasons for such delay. During the course of hearing, Mr. Tushar Mehta, learned Solicitor General had submitted that the Governor would take a decision expeditiously.

We are informed that the Governor of Tamil Nadu has referred the matter to the Hon'ble President of India.

There is no dispute regarding the fact of the applicant of having undergone a sentence of 32 years. We are informed by Mr. Gopal Sankaranarayanan, learned senior counsel that the applicant was released on parole twice earlier and there was no complaint about his conduct during his release. We are also informed that the applicant is on parole at present.

In view of the stand taken by the Union of India that the State Government does not have the power to entertain a mercy petition under Article 161 of the Constitution of India, especially when the sentence of death imposed has been commuted to life, the matter requires to be heard.

There is sufficient material that has been

produced on behalf of the applicant about his conduct during his long incarceration in jail, acquisition of educational qualifications and his ill health. Taking into account the fact that the applicant has already spent more than 30 years in prison, we are of the considered view that he is entitled to be released on bail, in spite of the vehement opposition by Mr. K.M. Nataraj, learned Additional Solicitor General.

The applicant is directed to be released on bail, subject to the satisfaction of the Designated Special TADA Court, Chennai. In addition, the applicant shall report to the Jolarpet Police Station, in the 1st week of every month. He shall not leave the State without seeking permission of this Court.

IA stands disposed of.

List the Special Leave Petitions on
27.04.2022.

(Geeta Ahuja)
Court Master

(Anand Prakash)
Court Master