IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03.06.2020

JUDGMENT PRONOUNCED ON : 18.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl.A.No.228 of 2020

Kalailingam (aged 33 years), A-4
S/o.Raman,
Kamachipatti Village,
Paganeri, Sivaganga District.
(Now confined in the Central Prison, Cuddalore) ..Appellant

Vs.

State rep. by:The Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad (Camp at Puducherry)
(R.C.No.1/2014/NIA/HYD)
(in Cr.No.25 of 2014 Odiansalai Police Station,
Puducherry)(through Special Public Prosecutor) … Respondent

Prayer: Criminal Appeal as against the judgment passed in Crl.M.P.No.51 of 2020 dated 13.05.2020 in Spl.S.C.No.5 of 2014 on the file of Principal Sessions Court, Puducherry.

For Appellant :: Mr.P.Pugalenthi

For Respondent :: Mr.R.Karthikeyan

J U D G M E N T

(Judgment of the Court was delivered by N. KIRUBAKARAN,J.)

"**RACE**"

"**REGION**"

"**RELIGION**"

are the potent propaganda tools apart from "LANGUAGE" and "IDEOLOGY" used by chauvinists, extremists, anti-national elements to woo the people, especially gullible youth to fight or protest against the institutions of democracy and the nation.

2.Violence, Destruction, Militancy, Assassinations, chaos, anarchy, mutiny, riots, Creation of conflicts based on religion, race and language, Secession, Separatism are synonymous with anti-national and separatist

movements which are active in India to disintegrate our country by soft and violent militancy. They do not believe in democracy, united India, development, peace and tranquility in the society. These elements have faith only in violence, destruction and creation of terror, fear and panic among the people. Many anti-national movements have been emerging in India and they are continuously contained by the Governments with the help of the people. In the past, we had a very violent **"Khalistan Movement"** in Punjab for creation of a country for Sikhs. Similarly, in the north-eastern States, a movement called **"National Liberation Front of Tripura"** for a separate nation for their people, **"Nagaland Liberation"** for establishment of an independent country for Nagas, **"United Liberation Front of Assam, (ULFA)"** for creation of a separate nation for Assamese and **"People Liberation Army of Manipur"** for formation of a separate country for the people of Manipur.

3.The above violent secessionist forces are successfully brought under

control with the support and participation of the people and sacrifices made by our forces by the Central Government by undertaking developmental activities in those areas. Similarly, "**Naxalism**" is also raising its ugly head in Bihar, Jharkand, Chattisgarh, Odissha, Telangana, Andhra Pradesh and borders of Tamil Nadu and Kerala. The situation is being handled effectively by the Central Government and the respective State Governments, even though the Naxals are bent upon killing security forces as well as innocent people and destroying vital installations. This Court is shuddered by media reports that some of the highly educated, respected personalities are having links and helping naxal movement, instead of bringing the misguided people to the main stream. They want our forces to be silent spectators when our national flag is being burnt and flags of enemy countries are waved even inside educational institutions by misguided and radicalized youth and students. To put it in a nutshell, our country is facing more danger in the hands of elements within the country rather than enemy countries. Therefore, the Government as well as the

people should be very cautious about those elements. One such organization which has been declared as "Terrorist Organization" is being dealt with in the case on hand.

The above prelude is essential for deciding the issue raised in this appeal.

4.The appeal has been filed against the dismissal of the bail petition filed in Crl.M.P. No. 51/2020 dated 13.05.2020 in Spl.S.C. NO. 5 of 2014 on the file of Principal Sessions Court, Puducherry.

5.The case of the prosecution is that on 29.01.2014, at 8.20 hours, a sentry on duty, at the residence of erstwhile Minister of State, Prime Minister's Office, Government of India, at No.5, Ellaiyamman Koil Street, Puducherry found a suspicious object doubted to be an explosive material below a parked car. On his complaint, a case was registered in Crime No. 25/2014 under Section 4 of Explosive Substances Act, 1908 at Odiansalai Police Station,

Puducherry and the bomb was diffused. The case was taken up for further investigation by CBCID, Puducherry and subsequently, Section 307 IPC, Section 4 of Explosive Substances Act, 1908 besides Sections 16 & 18 of Unlawful Activities (Prevention) Act, 1967 were invoked.

6.As per Ministry of Home Affairs order dated 31.01.2014, the National Investigation Agency (NIA) took over the investigation in Crime No. 25/2014 after registering the same at NIA, Hyderabad in R.C. No. 01/2014/NIA/HYD under Section 307 IPC, Section 4 of Explosive Substances Act, 1908 and Sections 16 & 18 of Unlawful Activities (Prevention) Act, 1967.

7.During the investigation, four other accused including the appellant, fourth accused were arrested on 03.04.2014. A similar case has been registered by Tamil Nadu Police in Crime No. 47/2014 on the file of Othakadai Police Station, Madurai District and on their confession, one more accused, namely, A5

Karthik was arrested on 25.04.2014 **in Central Prison, Madurai** and another accused namely, John Martin, A6 was arrested on 18.04.2014 **in Central Prison, Puducherry,** as they were already arrested by the "Q" Branch, CID, Madurai. Accused A1 to A6 were produced before the Special Court for NIA cases, Puducherry in the above case on P.T. warrant and remanded in this case.

8.In the above case only, a petition for bail had been filed by fourth accused stating that the accused were remanded on 09.04.2014 and all the accused persons have been in judicial custody for more than 6 years. The trial is almost complete and witnesses have been examined and cross-examination is also completed. It is further posted for examination of the investigating officer. That apart, Covid -19 virus has spread in jail and therefore, the bail petition.

9.After hearing the appellant as well as NIA, the Special Court dismissed the bail petition stating that similar petitions filed by the appellant had already

been dismissed and the said order was also confirmed by this Court. Moreover, most of the witnesses have been examined and the trial proceedings are nearing completion and considering the gravity of the offence, the Trial Court dismissed the bail petition by the impugned order dated 13.05.2020. Against the said order only, the present appeal has been preferred.

10.Mr.C.Pugalenthi, learned counsel appearing for the appellant would submit that the accused is in jail for more than 6 years. A2 was already granted bail by this Court. Almost all the witnesses have been examined and the investigating officer alone is yet to be examined before the Trial Court. Therefore, there is no chance of meddling with any of the witnesses. Apart from that, Covid-19 pandemic is alarming in jail and in view of that, the appellant has to be enlarged on bail. He relied upon the following judgments to stress his case for bail.

1.AIR (37) 1950 Supreme Court 27, Gopalan v. State of Madras.

2.AIR 1978 Supreme Court 1675, Sunil Batra v. Delhi Administration.

3.AIR 1980 Supreme Court 1579, Sunil Batra v. Delhi Admin.

4.AIR 1981 Supreme Court 746, Francis Coralie v. Union Territory of Delhi.

11.On the other hand, Mr.R.Karthikeyan, learned Standing Counsel for NIA would submit that the bail petition which has been dismissed by the Trial Court is the third application filed by the appellant. The first application for bail was dismissed on 20.06.2018 and the second one was dismissed on 09.08.2019. The appellant is a member of the banned organization called "Tamil Nadu Liberation Army" which is fighting for separation/secession of Tamil Nadu from India and for a separate nation for Tamil identity as per the pamphlets issued by them. The appellant has got four cases to his credit along with other accused. The accused have been indulging in acts of violence disturbing the peace and tranquility in the society in the name of language, culture and separate country. In the process, they are causing destruction of public and private properties apart from endangering the lives of people. It is contended that the trial is

almost complete except for the examination of the investigating officer. In case of granting bail, the trial in respect of other cases, pending against the appellant would be affected. Therefore, he seeks dismissal of the appeal.

12.Heard the parties and perused the records.

13.This Court called for the records in Crl.A. No. 661 of 2018 filed by the appellant and connected appeal in Crl.A. No. 644 of 2018 filed by John Martin @ John (A6) and HCP. No. 1845 of 2018 filed by Kaviarasan @ Raja (A3). On perusal of the same, it is seen that Crl.A. No. 644 of 2018 was filed by A6 against the dismissal of his bail petition and the said order was also confirmed by this Court while H.C.P. No. 1845 of 2018 was filed by Kaviarasan @ Raja (A3) directing respondents 1 to 3 therein, namely, the Deputy Superintendent of Police, Q- Branch CID, Madurai District Range, Madurai, the Deputy Superintendent of Police, Q-Branch CID, Ramanathapuram and Sivagangai

District Range, Ramanthapuram and the Deputy Superintendent of Police, NIA, Hyderabad to take appropriate steps to try the petitioner therein at one trial before one Sessions Court in respect of the charge-sheet in S.C. No. 401 of 2015 on the file of the VI Additional Sessions Court, Madurai, S.C. No. 7 of 2017 on the file of the Special Court for Bomb Blast Cases (Special Court for NIA), Poonamallee and in Spl. S.C. No. 5 of 2014 on the file of the Special Court for NIA, Puducherry. The said H.C.P. was also dismissed by this Court by order dated 09.08.2019.

14.A perusal of the charge-sheet filed in the above case would reveal that the appellant and other accused are members of terrorist organisation called "Tamil Nadu Liberation Army" (TNLA), which is declared so under Sections 2(1)(m) and 35 and included in the First Schedule at Serial NO. 32 of Unlawful Activities (Prevention) Act, 1967. It is punishable under Section 20 of the said Act to be a member of a gang or terrorist and the members of the organisation

want to achieve liberation of Tamil Nadu as an independent State and have an intention to threaten the sovereignty of India and to strike terror or likely to strike terror on the people or any section of the people in India, by using bombs, dynamites or other explosive substances or whatever nature, cause or likely to cause death or injury or loss or damage or destruction of supply and services of essentials to life of community in India.

15.The counter affidavit would reveal that the appellant and others placed explosive materials below a parked car under the residence of erstwhile Minister of State, Prime Minister's Office, Government of India at No.5, Ellaiyamman Koil Street, Puducherry, which was found on 29.01.2014 and a case was registered. On investigation, it was revealed that the appellant and other five accused, who are all members of the banned organisation "TNLA" had placed the bomb. Apart from that, similar destructive acts of placing pipe bombs were committed by the accused in Sivagangai District and Madurai and the details,

which are given in paragraph No.12 of the counter affidavit are extracted as follows:

Accused Name	Details of cases
Kalailingam (A-4)	(i) Sivagangai District, Kallal PS Crime No. 136/1999 u/s 147, 148, 452, 427, 326, 307 and 302 IPC r/w 120B, 109 IPC r/w 25(1)(b)(a) of Arms Act, 34(b), 4(a) of the Explosive Substances Act. (ii) Sivagangai District Kallal PS Crime No. 94/2012 u/s 302 IPC @ 120B, 342, 302 r/w 34 IPC (iii) Q Branch, Sivagangai District Crime No. 10/2014 u/s 120B IPC r/w 124A IPC and Section 3(a) & 5(a) of Explosive Substances Act 1908 and Section 15 r/w 16 B, 18, 20 of UAP Act 1967 (Transferred from Nachiyarpuram PS) (iv) Q Branch, Madurai District Crime No.47/2014 u/s 4 & 5 of Explosive Substances Act 1908 @ 120B IPC r/w 121, 121A, 124A IPC and Section 4, 5 of Explosive Substances Act 1908 and Section 15 r/w 16, 18, 20 of UAP Act @ 120B, 124A IPC and 34 IPC and Section 6 of Explosive Substances Act 1908 and Section 109 IPC r/w 15(a)(ii), 18, 20 of UAP Act 1967 (Case transferred from Othakadai PS)

After having a meeting and conspired among themselves on 31.12.2013, 01.01.2014 and 16.01.2014, the appellant and other accused with a common intention to cause danger to lives and properties to send a strong message against Government of India and its policies and authorities by planting bombs. The pamphlets thrown near the place of crime would speak about their ideology - "**Separate Tamil Nadu**", "**Tamil Culture**" and "**Tamil Language**" endangering the safety and security of the nation.

16.As per the charge-sheet, not only in Puducherry, but also in Sivagangai District and Madurai District, they planted pipe bombs to cause destruction thereby creating panic, terror among the people. Therefore, this case cannot be viewed like any other ordinary case as the appellant belongs to a banned organisation. As rightly pointed out by Mr.R. Karthikeyan, learned counsel for NIA, the trial is in the final stage and all the witnesses except the investigating officer have been examined. Therefore, the appellant can wait till the disposal of

the case.

17.It is not only the present case, but as observed above, four other cases are pending against the appellant (A4). There are two murder cases against the appellant in Sivagangai District, which are pending trial and witnesses are being examined. When the trials are in progress in the above cases, if the appellant is enlarged on bail, there is likelihood of his tampering with the witnesses, as stated in paragraph 13 of the counter affidavit. Besides, two earlier petitions, seeking bail, filed by the appellant were dismissed. The petition for bail which was dismissed by the Trial Court by order dated 09.08.2019 was also confirmed by this Court.

18.The Hon'ble Apex Court restated the settled legal position while deciding an application for bail in ***National Investigation Agency v. Zahoor Ahmad Shah Watali*** reported in ***(2019) 5 SCC 1***. Paragraph 21 of the said

decision reads as follows:

> *"**21.**Before we proceed to analyse the rival submissions, it is apposite to restate the settled legal position about matters to be considered for deciding an application for bail, to wit:*
>
> *(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
>
> *(ii) nature and gravity of the charge;*
>
> *(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 tampered with; and*
>
> *(viii) danger, of course, of justice being thwarted by grant of bail.*
>
> *(State of U.P. v. Amarmani Tripathi [State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21, para 18 : 2005 SCC (Cri) 1960 (2)].)"*

In ***Jayendra Saraswathi Swamigal v. State of Tamil Nadu*** reported in ***(2005) 2 SCC 13***, the Hon'ble Apex Court has observed in paragraph 16 as

follows:

> *"**16.** Shri Tulsi has lastly submitted that the prohibition contained in Section 437(1)(i) CrPC that the class of persons mentioned therein shall not be released on bail, if there appears to be a reasonable ground for believing that such person is guilty of an offence punishable with death or imprisonment for life, is also applicable to the courts entertaining a bail petition under Section 439 CrPC. In support of this submission, strong reliance has been placed on a recent decision of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] . The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh [(1962) 3 SCR 622 : AIR 1962 SC 253 : (1962) 1 Cri LJ 215] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179] and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public*

or the State and other similar factors which may be relevant in the facts and circumstances of the case. The case of Kalyan Chandra Sarkar [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] was decided on its own peculiar facts where the accused had made seven applications for bail before the High Court, all of which were rejected except the fifth one which order was also set aside in appeal before this Court. The eighth bail application of the accused was granted by the High Court which order was the subject-matter of challenge before this Court. The observations made therein cannot have general application so as to apply in every case including the present one wherein the Court is hearing the matter for the first time."

19.No doubt "Bail " is the rule and "Jail" is the exception as observed by legendary Justice V.R.Krishna Iyer in the case of ***State of Rajasthan, Jaipur v. Balchand alias Baliay*** reported in ***(1977) 4 SCC 308***. The relevant paragraphs 2 and 3 of the said decision are usefully extracted hereunder:

*"**2. The basic rule may perhaps be tersely put as bail, not jail**, except where there are circumstances suggestive of fleeing*

from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.

3. *It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. Even so, the record of the petitioner in this case is that, while he has been on bail throughout in the trial court and he was released after the judgment of the High Court, there is nothing to suggest that he has abused the trust placed in him by the court; his social circumstances also are not so unfavourable in the sense of his being a desperate character or unsocial element who is likely to betray the confidence that the court may place in him to turn up to take justice at the hands of the court. He is stated to be a young man of 27 years with a family to maintain. The circumstances and the social milieu do not militate against the petitioner being granted bail at this stage. At the same*

time any possibility of the absconsion or evasion or other abuse can be taken care of by a direction that the petitioner will report himself before the police station at Baren once every fortnight."

20.However, in this case, the offences said to have been committed are under various Sections 16 and 18 of Unlawful Activities Act, 1967 and Section 4 of Explosive Substances Act, 1908 apart from IPC offences. The gravity of offences are very serious, especially against the unity and integrity of the country and endangering the lives of the people. Hence, the case of the appellant could not come under general rule governing the grant of bail. A Constitution Bench of the Hon'ble Apex Court in the case of ***Kartar Singh v. State of Punjab*** reported in ***(1994) 3 SCC 569*** had held as follows:

*"**351.** No doubt, liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may*

not lose faith in the system of judicial administration and indulge in private retribution."

The Hon'ble Apex Court in the case of ***Prahlad Singh Bhati v. NCT, Delhi and Another*** reported in ***(2001) 4 SCC 280*** had declared as follows:

*"**8.** The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case*

against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

In the decision reported in ***(2002) 3 SCC 598, Ram Govind Upadhyay v. Sudarshan Singh and Others***, the Hon'ble Apex Court has held as follows:

*"**2.** While liberty of an individual is precious and there should always be an all-round effort on the part of law courts to protect such liberties of individuals — but this protection can be made available to the deserving ones only since the term protection cannot by itself be termed to be absolute in any and every situation but stands qualified depending upon the exigencies of the situation. It is on this perspective, that in the event of there being committal of a heinous crime, it is the society that needs protection from these elements since the latter are having the capability of spreading a reign of terror so as to disrupt the life and the tranquillity of the people in the society. The protection thus is to be allowed upon proper circumspection depending upon the fact situation of the matter. It is in this context the observations of this Court in*

Shahzad Hasan Khan v. Ishtiaq Hasan Khan [(1987) 2 SCC 684 : 1987 SCC (Cri) 415] seem to be rather apposite. This Court observed in Shahzad Hasan Khan [(1987) 2 SCC 684 : 1987 SCC (Cri) 415] as below: (SCC pp. 690-91, para 6)

"Had the learned Judge granted time to the complainant for filing counter-affidavit, correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in

the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case."

***3**.Grant of bail though being a discretionary order — but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.*

***4**.Apart from the above, certain other which may be attributed to be*

relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

In the decision reported in ***(2004) 7 SCC 528, Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Another***, the Hon'ble Apex Court has held as follows:

> *"**11.** The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:*
>
> *(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
>
> *(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] .)"

In the decision reported in ***(2015) 7 SCC 440, Prasad Shrikant Purohit v. State of Maharashtra and Another***, the Hon'ble Apex Court has held as follows:

*"**90.** To appreciate the said contention, it will be necessary to make a detailed reference to Section 2(1)(e) of MCOCA. As far as the nature of activity is concerned, in Section 2(1)(e), it is stated that "organised crime" means continuing unlawful activity by use of violence or threat of violence or intimidation or coercion or other unlawful means with the object of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. If we make a detailed reference to the said provision, the use of violence, etc. should have been carried out with the object of either gaining pecuniary benefits or for gaining undue economic or other*

advantage for oneself or for any other person or for promoting insurgency. We find that the violent activity need not necessarily be for pecuniary advantage in all acts of "continuing unlawful activity". Indulging in such violent activity can be for gaining pecuniary advantage or for gaining any other undue economic or other advantage or for promoting insurgency. Therefore, at the very outset, we do not find any scope to interpret Section 2(1)(e), namely, an "organised crime" to mean that in order to come within the said expression indulging in such violent or other activity should always be for pecuniary gain. On the other hand, we can safely hold that such indulgence in violent activity can be either for pecuniary gain or for economic advantage or for any other advantage either for the person who indulged in such activity or for any other person or for promoting insurgency. In that respect, we find that expected benefit for indulging in any violent or related activity could be for any of the above purposes independently and one such purpose may be for promoting insurgency."

The Hon'ble Apex Court in the decision reported in ***(2017) 13 SCC 751, State of Bihar and Another v. Amit Kumar @ Bachcha Rai***, has held as

follows:

> *"**11.** Although there is no quarrel with respect to the legal propositions canvassed by the learned counsel, it should be noted that there is no straitjacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of the Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although "bail is the rule and jail is an exception" is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail."*

In ***Dataram Singh v. State of Uttar Pradesh and Another*** reported in ***(2018) 3 SCC 22,*** the Hon'ble Apex Court has held as follows:

> *"Leave granted. A fundamental postulate of criminal*

jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

***2**.There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.*

> ***6**.However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."*

In the decision reported in ***(2018) 11 SCC 458, Lt. Col. Prasad Shrikant Purohit v. State of Maharashtra*** the Hon'ble Apex Court has held as follows:

> *"29.The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-*

application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge."

In view of the above position of law and given the gravity of the offence, as rightly observed by the Trial Court, it would not be appropriate to grant bail to the appellant when the trial is almost going to be over. Therefore, the appeal fails and the same is dismissed. No costs.

21.The charge sheet filed by the Q Branch CID Ramanathapuram in S.C. NO. 401 of 2015 i.e, (Crime NO. 471/2014) on the file of Othakkadai Police Station, Madurai contains seditious pamphlets published by the appellant and

other accused. Some important portions of the pamphlets are extracted to show as to how the pamphlets are seditious in nature and the accused are trying to create terror in the name of language, culture and separation of Tamil Nadu.

"ஏகாதிபத்திய இந்தியம் தகர்ப்போம்! தமிழ்நாட்டை மீட்போம்!

தமிழ்நாடு, காசுமீரு, பஞ்சாப், மிசோராம், மணிப்பூர், நாகலாந்து போன்ற தேசிய இனங்களின் உரிமைகளை மறுத்து வல்லாதிக்கத்தை கோலோச்சிவரும் இந்திய ஏகாதிபத்திய அடக்குமுறைகளுக்கெதிராய் போராடிவரும் அனைத்து தேசிய மக்களின் விடுதலைப் போராளிகளே கை கோர்ப்போம்! இந்திய ஆதிக்கம் தகர்க்க அணியமாவோம்! மக்கள் புரட்சிக்கு வழி வகுப்போம்! நம் தேசங்களை மீட்டெடுப்போம்!

தமிழ்மொழிவழிக் கொள்கைக்கும் தமிழ்த்தேசிய உரிமைக்கும் மக்களின் வாழ்வாதாரத்திற்கும் போராடிவரும் தமிழ்நாட்டு குடிமக்களை, சமூக உணர்வாளர்களை, இயக்கத்தோழர்களை காவல் துறையை ஏவிவிட்டு தாக்குதல் நடத்தி துன்புறுத்தி கைது செய்து பொய்வழக்கிட்டு சிறைப்படுத்தி போராட்டத்தை முடக்கி உரிமைகளை நசுக்கி இந்திய பயங்கரவாதத்திற்கு துணை நிற்கும் தமிழக ஆட்சியாளர்களின் ஏமாற்று தேர்தல் வலையிலிருந்து தேசத்தின் மக்களே மீண்டெழுங்கள் ஆட்சி அதிகாரத்தின் அடக்குமுறையை எதிர்த்து முன்னேறுங்கள்!

தமிழ்நாட்டை மீட்டெடுப்போம்! தமிழர்களை கூறபோடும் சாதியத்தை

வேரறுப்போம்! உழைக்கும் மக்களை ஒன்று படுத்தி பாட்டாளிவர்க்கத் தலைமையில் தமிழ்நாடு விடுதலையை வென்றெடுப்போம்! பொதுமை தேசத்தை உருவாக்குவோம்!

தேசிய இனங்களின் விடுதலைப் போராட்டம் வெல்லட்டும்!

தேசிய இனங்களின் இந்திய சிறைக் கூடம் தகரட்டும்!

தமிழ்நாடு விடுதலை மலரட்டும்!

தமிழ்த்தேசியத்தலைவர் தோழர் தமிழரசன் அவர்களுக்கு வீரவணக்கம்!

தமிழ் மொழிக்கு தமிழ்த்தேசிய உரிமைக்கு விடுதலைக்கு போராடி ஈகையான தமிழ்தேசிய உணர்வாளர்களுக்கும் போராளிகளுக்கும் வீரவணக்கம்!"

The above seditious pamphlets would demonstrate demand for "Liberation of Tamil Nadu" and "Tamil Language". This kind of fringe elements are stated to be more active in Tamil Nadu and wearing the masks of NGOs, Human Rights Organisations and political groups are trying to create unrest in Tamil Nadu by way of continuous propaganda through media

especially social media instigating the people to protest, creating fear psychosis and spreading hatred among the masses. However, it is to be noted that many of the NGOs and Human Rights Organizations are really doing yeomen service to the people.

22.Recent Galwan Valley conflict between India and a neighboring country exposed people who are lovers of the neighboring nation, as they openly support the enemy country. The shocking fact is that many such elements cropped up in media to spread distorted news and exaggerate minor incidents.. They are not giving straight forward NEWS and only disseminate their VIEWS with name of NEWS to mislead people. These elements are threat to our nation. The fundamentalists and extremists which are a threat to national integrity and unity have to be nipped in the bud as the propaganda and their acts go against the very integrity of our nation and public welfare.

23.It is stated disgruntled elements are stated to be mainly responsible for thousands of agitations in Tamil Nadu. It is a fact that Tamil Nadu tops the list of most protests in India since 2009. For example, in 2015, Tamil Nadu recorded the highest number of protests among all States recording 20,450 while Punjab came a distant second with little over 13000 protests. This is according to data released by Bureau of Police Research and Development, Ministry of Home Affairs, Union of India. In Tamil Nadu, more number of cases are being registered by the National Investigation Agency and more number of terror activities are carried out. Since 2014, the National Investigation Agency has claimed to have arrested 127 ISI sympathizers across the Nation and the highest number of 33 were from Tamil Nadu.

24.Some of the organizations in the name of fighting for the rights of the people always raise their voice for rights, forgetting about corresponding duties. These people, in effect, they also do not have any faith in the system. They

always support separatists, secessionists forces and those who celebrate our enemy countries and criminals in the name of violation of human rights. Sometimes, these groups themselves make anti-national comments making use of "Right to Expression" and "Freedom of Expression". By "Freedom of Expression", one can protest against the Government and not against the nation. There is a huge difference between the fight against the people in power and fight against the country. These elements also do a lot to damage to our country and the democracy and therefore, people should be wary of those elements.

25.When these elements take "Tamil Culture", "Tamil Race" and "Tamil Language" as weapons for their sinister plans, the Governments should be careful enough to see that no action of the Government would pave way for or strengthen the propaganda made by these elements especially, with regard to emotive language issue. Already political parties are waiting to make use of such position to arouse linguistic chauvinism to harvest political dividends.

26.Any action of the Government, which is likely to create an apprehension or give an impression that their language is discriminated or any other language is given prominence, would amount to adding fuel to the mischievous propaganda made by these secessionist forces. This Court is interested in safeguarding the integrity and independence of this country which our ancestors got by shedding their sweat and blood and laying down their precious lives. At no cost, the integrity and security of the nation should be jeopardized.

27.Our country is a multiracial, multicultural, multilingual and multi-religious nation. Peace and Harmony have to be maintained. For that, Governments should make every citizen to feel that his language, culture, religion, race are preserved and protected and not interfered with or suppressed by any action of the Governments. Even an apprehension should not be created in the minds of the people which would be certainly counter productive.

28.The Britishers have left behind five valuable treasures in our favour viz.,

United India;

English - Language of Science and Communication;

Infrastructures developed by them;

Laws enacted;

Administrative system.

The above inherited treasures should be preserved and enhanced and under no circumstances they should be devalued or destroyed. Though our country got independence in 1947, as a whole, of course, political integration of princely states was done due to the great efforts of Sardar Vallabhbhai Patel as Union Home Minister, linguistic States have been created by the Act of Parliament in 1956, namely, "States Reorganisation Act, 1956" paving way for the creation of States and territories according to the language of the people.

When the States were reorganized based on language, one can understand the importance of language of people of various States.

29.“**International Mother Language Day**” is a worldwide annual observance held on 21 February, first announced by UNESCO in 1999 and adopted by UN General Assembly in 2007 to promote awareness of linguistic and cultural diversity and promote multilingualism. The idea to celebrate “International Mother Language Day” was the initiative of Bangladesh and it is to commemorate the martyrs who sacrificed their lives on the very day in 1952 for sake of “**Bangla Language**”, when Bangladeshis fought against imposition of Urdu language as national language by united Pakistan Government in 1952 and for recognition of “Bangla language” when “Bangladesh” was part of Pakistan as “East Pakistan”.

30.Similarly, in Tamil Nadu, language issue played a major role and it

gave rise to formation of non-congress Government in 1967, which is continuing till date. Many States are equally very sensitive when it comes to language issue. For example, the State of Maharashtra has been claiming 814 border villages in Belagavi (earlier called as Belgaum), Karuvar, Bidar and Gulbarga districts of Karnataka, as those areas have a majority of Marathi speaking people. The issue is still pending before the Hon'ble Apex Court at the instance of the Maharashtra Government. Therefore, what is expected from the Governments is that,

(i) Not to create an impression in the minds of the people that their language is being discriminated or suppressed;

(ii) Not to create any apprehension in the minds of the people that only a few chosen languages are given prominence and recognition especially when there are about 22 languages recognized and listed in the VIII Schedule of the Constitution of India which are entitled to equal treatment and protection so that all Indian languages are well-developed and preserved.

(iii) To deal with communal elements, religious, extremist forces very firmly.

31.The above suggestions are only in the interest of safeguarding the unity and integrity of the nation. There should not be any room for linguistic chauvinists to create any unrest in the name of languages in any part of our country.

32.As dealt with in this case, the banned organization namely, "Tamil Nadu Liberation Army", as already stated, is asking people to fight for secession of State of Tamil Nadu from the Indian Union in the name of language, race and culture. Only to see that these forces do not raise their ugly heads, the above suggestions are given by this Court.

33.Before parting with the case, this Court reiterates that unity of the

nation and safety of the people are paramount. The Governments especially the Central Government has to keep a serious vigilance on religious fundamentalists groups, communal elements and anti-national forces and their supporters, flow of funds particularly in North-East, Tamil Nadu, Kerala, Telangana, West Bengal, Punjab, Orissa, Bihar, Chattigarh where these elements are active and radicalising the youth by creating fear psychosis. These elements ridicule the sacrifices made by our brave soldiers in the borders and disturbed states and glorify the terrorists, trouble creaters in the name of human right violations. Regular reviews should be conducted in the suspected areas in co-operation with all agencies and a comprehensive scheme has to be devised including constant vigil on cyber space. Scientific advancements like internet are effectively used by these elements for spreading false information, hate messages and misleading propaganda. The Hon'ble Supreme Court in ***Anuradha Bhasin v. Union of India and others*** reported in ***(2020) 3 SCC 637*** had observed that modern terrorism heavily relies on the internet. Paragraphs 43

and 44 of the judgment is usefully extracted hereunder:

> *"**43.** Modern terrorism heavily relies on the internet. Operations on the internet do not require substantial expenditure and are not traceable easily. The internet is being used to support fallacious proxy wars by raising money, recruiting and spreading propaganda/ideologies. The prevalence of the internet provides an easy inroad to young impressionable minds. In this regard, Gregory S. McNeal, [Gregory S. McNeal, "Cyber Embargo: Countering the Internet Jihad", 39 Case W Res J Int'l L 789 (2007).] Professor of Law and Public Policy, Pepperdine University, states in his article about propaganda and the use of internet in the following manner:*
>
> > *"Terrorist organisations have also begun to employ websites as a form of information warfare. Their websites can disperse inaccurate information that has far-reaching consequences. Because internet postings are not regulated sources of news, they can reflect any viewpoint, truthful or not. Thus, readers tend to consider internet items to be fact, and stories can go unchecked for some time. Furthermore, streaming video and pictures of frightening scenes can support and magnify these news stories. As a result, the internet is a powerful and effective tool for spreading propaganda."*
>
> *44..Susan W. Brenner, [Susan W. Brenner, "Why the*

Law Enforcement Model is a Problematic Strategy for Dealing with Terrorist Activity Online", 99 Am Soc'y Int'l L Proc 108 (2005).] NCR Distinguished Professor of Law and Technology, University of Dayton School of Law, also notes that the traditional approach has not worked satisfactorily on terrorism due to the proliferation of the internet. It is the contention of the respondents that the restriction on the freedom of speech was imposed due to the fact that there were national security issues over and above a law and order situation, wherein there were problems of infiltration and support from the other side of the border to instigate violence and terrorism. The learned Solicitor General pointed out that the "war on terrorism" requires imposition of such restriction so as to nip the problem of terrorism in the bud. He submitted that in earlier times, sovereignty and integrity of a State was challenged only on occurrence of war. In some cases, there have been instances where the integrity of the State has been challenged by secessionists. However, the traditional conceptions of warfare have undergone an immense change and now it has been replaced by a new term called "war on terror". This war, unlike the earlier ones, is not limited to territorial fights, rather, it transgresses into other forms affecting normal life. The fight against terror cannot be equated to a law and

order situation as well. In this light, we observe that this confusion of characterising terrorism as a war stricto sensu or a normal law and order situation has plagued the submission of the respondent Government and we need to carefully consider such submissions."

The Governments should effectively deal with anti-national forces with an iron hand which are bent upon creating fear, unrest in the society in the name of "language", "race", "religion", "region" or "ideology" and stall the development and divide the country. Therefore, this Court expects the Governments to deal with the above sensitive issues very carefully and cautiously to protect the largest democracy in the world, keep the destructive forces including chauvinistic linguistic forces at bay and to uphold our "Unity in Diversity".

18.09.2020

R.HEMALATHA, J

1). I agree to the dismissal of this appeal.

2). However, I do not subscribe to the views expressed by Hon'ble Justice Mr.N.Kirubakaran with regard to the Tamil Organisations, the languages and the consequent suggestions given to the Government. They are not relevant to the present petition.

3). Learning languages is a matter of one's personal choice.

18.09.2020

To

State
Rep. by The Deputy Superintendent of Police,
National Investigation Agency,
Hyderabad (Camp at Puducherry)

N.KIRUBAKARAN, J.

and

R.HEMALATHA, J.

nv

Crl.A.No.228 of 2020

Dated :18.09.2020