

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.12.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.No.13123 of 2020

Jaffar Sathiq @ Babu

S/o.Mohamed Yakoob

Accused

... Petitioner/2nd

Vs.

The State represented by,

The Assistant Commissioner of Police,

Coimbatore South,

in Crime No. 245 of 2020 in D-3 Podanur Police Station,

Coimbatore – 641023.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioner on bail in Crime No. 245 of 2020, on the file of the Inspector of Police, D-3 Podanur Police Station, Coimbatore.

For Petitioner : Mr.I.Abdil Basith

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Crl. Side)

ORDER

(The cases have been heard through video conference)

This is a petition for bail filed against the dismissal of bail petition dated 23.07.2020 by the Learned District and Sessions Judge, Coimbatore in CrI.M.P.No.2044 of 2020 in Cr.No.245 of 2020 registered by the respondent for alleged offences under Sections 447, 448, 294(b), 307, 506(ii), 120-B of IPC r/w Sections 15,16, 18 of the Unlawful Activities (Prevention) Act. During the pendency of the bail application before this Court, the petitioner has been released on statutory bail.

2. When the matter was taken up for hearing, Mr.T.Shunmugarajeswaran, Government Advocate (Crl.Side), would submit that the petitioner has been released on statutory bail and thereby the petitioner has become infructuous.

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3. However, during the hearing of the bail application, an objection was raised by Mr.T.Shunmugarajeswaran, Government Advocate (Crl.Side), stating that the case has been registered under UAP

Act which is a scheduled offence under the National Investigation Agency Act, 2008 (hereinafter referred as NIA Act) and the bail application has been dismissed by the learned District and Sessions Judge, Coimbatore. He would submit that till such time, the Special Court is constituted by the State Government, as per Sec 22(2) of the NIA Act, the provisions of Chapter IV of the NIA Act shall be applicable automatically in respect of orders passed by the Court of Sessions. He would further submit that as per Section 21 of the NIA Act, notwithstanding anything contained in the Criminal Procedure Code, only an appeal shall lie from any judgment, sentence or order, of a Special Court to the High Court and the said appeal has to be heard by a bench of two Judges of the High Court. Thereby, the bail application has to be necessarily numbered as an appeal and heard by a bench of two Judges of the High Court.

4. In support of the above submission, he relied on the order of this Court passed by the Hon'ble Justice Mr.P.Rajamanickam in Crl.RC.No.18 of 2020 dated 13.05.2020 wherein, the Hon'ble Single Judge following the Division Bench of this Court in *State of Tamil*

Nadu and Others vs S.Tharvees Maideen in W.A.No.857 to 861 of 2015 dated 16.10.2015 has held that, till such time the Special Court is constituted, the Court of Sessions shall have all the powers and it has to follow the procedure provided under Chapter IV of the NIA Act and thereby, only an appeal will lie and that too, it has to be posted before a two Judges bench of this Court.

5. Per contra, Mr.John Satyan representing Mr. I.Abdil Basith, the learned counsel for the petitioner submitted that yet another Hon'ble Single Judge of this Court (Hon'ble Justice Mr.M.V.Muralidharan) in CrI.RC.No.223 of 2017 dated 28.04.2018 following the judgment of another Division Bench of this Court in CrI.A.No.243, 340 and 524 of 2015 dated 01.09.2015 and also following the decision of the Hon'ble Full Bench of the Patna High Court in *Bahadur Kora and Others Vs. State of Bihar reported in 2015 (2) MWN (Criminal) 305 (FB) Patna* had held that Sec 21 of the NIA Act will not be applicable and only the provisions of the Criminal Procedure Code alone will apply and thereby the petition filed against the order passed by the District Court in matters concerning UAP Act can be heard by a Single Judge. He further

submitted that the judgment of the Full Bench of the Patna High Court had not been placed before the Hon'ble Justice Mr.P.Rajamanickam, and though it has only a persuasive value, when another Judge of this Court (Hon'ble Justice Mr.M.V.Muralidharan) has taken a divergent view following a Division Bench of this Court, the matter had to be necessarily placed before a larger bench for an authoritative pronouncement. He would further submit that in all other High Courts, the bail applications filed against the dismissal orders of the District and Sessions Court for offences under the UAP Act, are placed before the Single Judge only.

6. It is seen that in Crl.RC.No.18 of 2020 dated 13.05.2020, the Hon'ble Justice Mr.P.Rajamanickam has held that against any order passed by the District and Sessions Judge dismissing the bail for offence under the provisions of UAP Act, the application has to be numbered as an appeal and it has to be posted before a two Judges Bench of this Court. He had followed a judgment of this Court in ***State of Tamil Nadu and Others vs S.Tharvees Maideen*** in W.A.No.857 to 861 of 2015 dated 16.10.2015. Whereas, another Judge of this Court Hon'ble Justice

Mr.M.V.Muralidharan in Crl.RC.No.223 of 2017 dated 28.04.2018 following the judgment of another Division Bench of this Court in Crl.A.No.243, 340 and 524 of 2015 dated 01.09.2015 has held that, in respect of dismissal of applications by the District and Sessions Judge, the provisions of Criminal Procedure Code alone will apply and it can be heard by a Single Judge. Further, in the earlier judgment in Crl.RC.No.223 of 2017 dated 28.04.2018, a Full Bench decision of the Patna High Court in *Bahadur Kora and Others Vs. State of Bihar reported in 2015 (2) MWN (Criminal) 305 (FB) Patna* has been referred to.

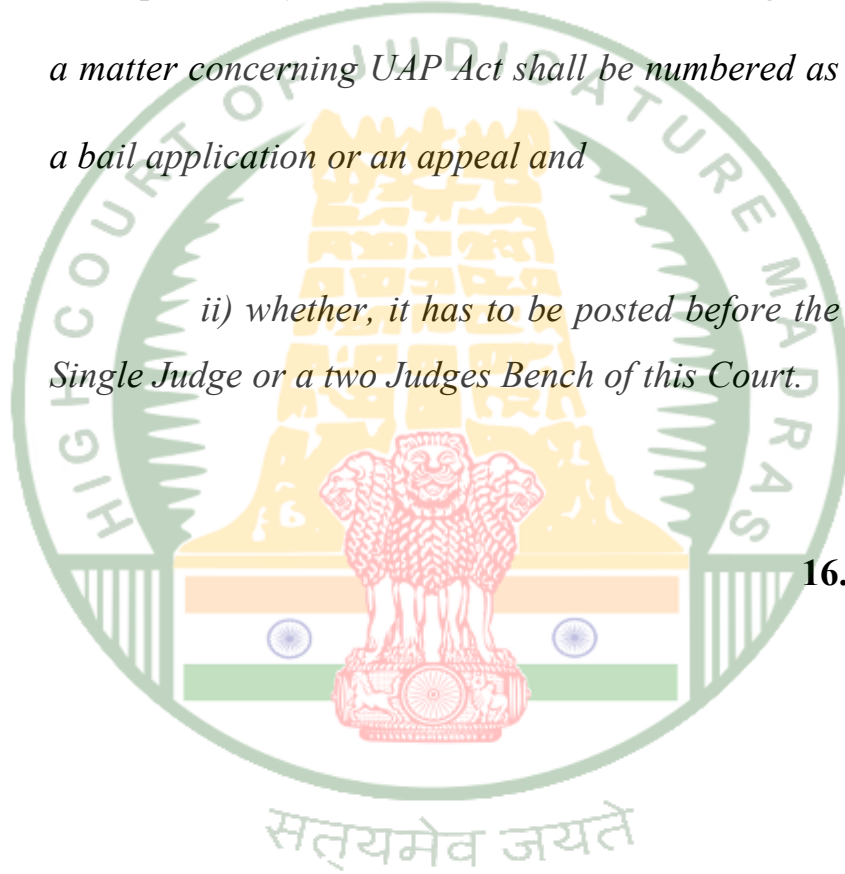
7. Recording the submission of the learned Government Advocate (Crl.Side) that the petitioner has been released on statutory bail, this petition is dismissed as infructuous.

8. However, since it has been brought to notice that inconsistent views have been taken by two different Single Judges and two different Benches of this Court, Registry is directed to place the matter before the Hon'ble Chief Justice for constitution of a Hon'ble

larger Bench for pronouncement of an Authoritative decision to answer the questions;

i) whether an application against the order passed by the District and Sessions Judge in a matter concerning UAP Act shall be numbered as a bail application or an appeal and

ii) whether, it has to be posted before the Single Judge or a two Judges Bench of this Court.



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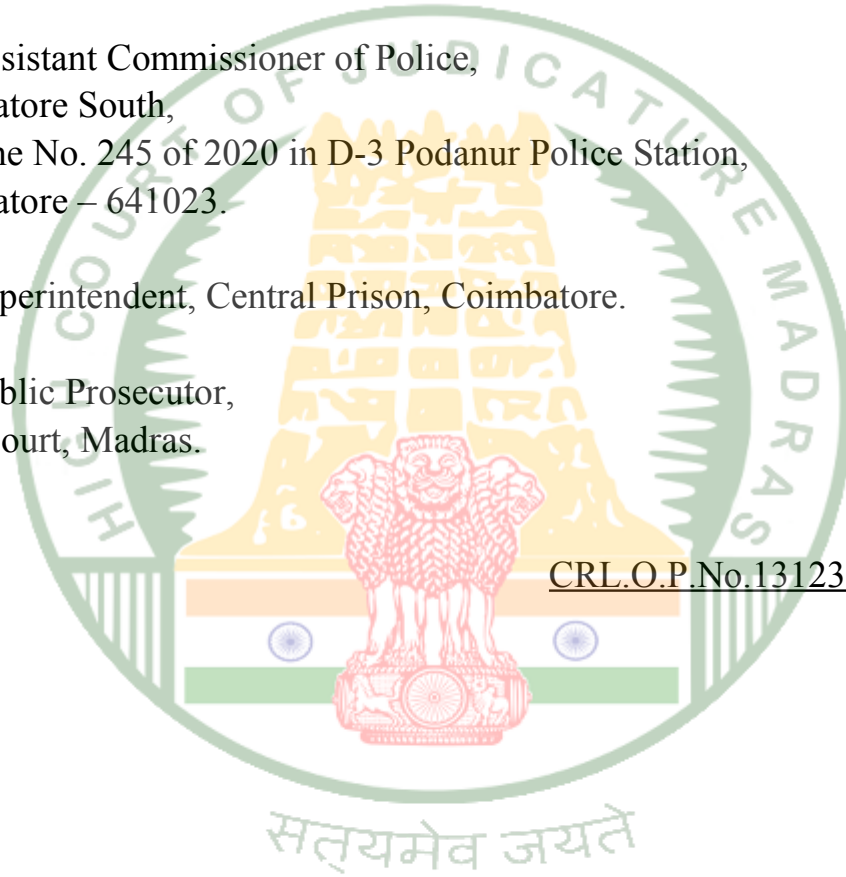
To

1.The District Munsif cum Judicial Magistrate Court, Madukkarai.

2.The Assistant Commissioner of Police,
Coimbatore South,
in Crime No. 245 of 2020 in D-3 Podanur Police Station,
Coimbatore – 641023.

3.The Superintendent, Central Prison, Coimbatore.

4.The Public Prosecutor,
High Court, Madras.



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