

**IN THE SPECIAL COURT FOR TRIAL OF NIA CASES, KERALA,
ERNAKULAM**

Present:-

Shri. Kamanees K., Judge, Special Court for NIA Cases.

Monday, the 17th day of January, 2022 / 27th Pousha, 1943

CrI.M.P No. 242/2021

in

RC No. 01/2021/NIA/KOC

(Vizhinjam P.S. Crime No. 498/2021)

Petitioner / Accused No. 7 :-

Suresh Raj.A @ Suresh @ Chinna Suresh,
aged 39 years, S/o Arasarathinam,
Door No. 128, 8th Cross Street,
Irandamkatalai, Samayapuram,
Kundrathur, Chennai.

By Adv. Sri. Sangeetha Lakshmana

Respondent / Complainant:-

Union of India, represented by National Investigation Agency, Kochi

By Smt.Sindhu Ravisankar, Public Prosecutor, NIA.

This petition having been heard on 10/01/2022 and the Court on this day passed the following:-

ORDER

- 1) This is a report accompanied by a complaint put in by Shri.Suresh Raj (A7) in this case, emailed to the court by the superintendent, sub Jail, Aluva..

This is a complaint regarding the torture allegedly suffered by him while in the custody of the NIA, seeking protection for his family from the NIA, requesting time to speak to the Judge to confess, seeking protection and right to life as a human being.

2) In the petition he states that he was arrested and was taken to the custody of NIA on 02.08.2021 and he was ignorant as to why he was taken. He states that he was tortured to admit the crime. He was in the custody of NIA from 02.08.2021 and was brought to the court on 02.08.2021. He states that he was tortured physically by tying his hands, hitting his head with steal plate. He was kicked on his hip. He as shown many photographs and some telephone numbers. He refused to accept that these numbers and photographs were known to him. They started harassing by using abusive words against his son, wife and daughter. On 08.08.2021 night one person by name Sreekanth came in at 8 p.m. and threatened him that he will bring his 8 year old daughter and sexually assault her to make him accept the crime. He also states that he will bring his son and torture him to make him accept the crime. As a father he could not tolerate the words that were used against his daughter. The officer said that all the members of his family will brought to this case and their life will be ruined and that his wife will be in the jail for 10 years and his children would be begging for food. He says that other accused Soundarajan was witnessing that moment. He could

only cry. He says that he never expect that an NIA officer will be using such unparliamentary words against an 8 year old girl in front of girl's father. He came to suffer huge mental stress and worries about the family. Therefore, he wanted to seek help from the court to confess his grievance. He says that his family be saved from the National Investigating Agency. He states that he should get a personal time to air all his grievances.

3) His statement was taken on 08.12.2021 after he was brought to the court. His statement was taken in isolation by the court. He was given sufficient time to recollect and to speak. He states that he was arrested by the NIA on 02.08.2021 in connection with this case and he was produced before the court. After he was produced, his custody was given to the NIA.

4) He does not remember the date of the crime exactly. But it was on the second custody time of 8 days. At about 10 p.m., one Sreekanth from the NIA approached him when he was sitting on the floor. Sreekanth stood on his feet which was painful. He sat on a chair and got hold of his hands. Then he began to question him. If he did not confess, the officer said that he will rape petitioner's 8 year old daughter and even said that he will see that all members of the petitioner's family would solicit alms for their livelihood. He also said that he will see that the petitioner's family members will also be raped by other persons.

5) He said that he did not speak about this incident due to fear when he was produced before the court. He disclosed this fact to one of his friends in Aluva jail and that friend, whom he did not remember, wrote a complaint in English. The complaint was given to the officer in jail. The officer said that he will mail it.

6) The statement was taken in the presence of a translator called Shri. John Kurian. The accused was speaking in Tamil which was translated to English. The statement was read over and explained to him.

7) I heard the counsel for the accused and learned Prosecutor. A report was called for from the NIA and the Sub Jail, Aluva.

8) The report of the Sub Jail, Aluva shows that a petition was received by them on 28.08.2021 and it was sent by email to the court on 01.09.2021. However, only when the matter was called for by the court through its letter dated 17.11.2021, he came to know that the email was not received in the court. The email was sent to a wrong mail ID. The original was not sent due to restrictions owing to pandemic. Soundarajan was sent to the District Jail, Ernakulam on 29.09.201 and Suresh Raj was sent to the Central Prison, Viyyur on 22.10.2021.

9) The petitioner was actually given to NIA custody for 8 days on 02.08.2021 and he was produced back on 09.08.2021 after having medical

examination done. 5 more days custody was given on 09.08.2021 and he was produced back on 13.08.2021 and this time also there had been medical examination. The incident must have occurred during this period, as it is alleged. Later on 13.08.2021, the accused was produced and he did not raise any complaints seemingly. 10 days custody was again given on 13.09.2021 and later he was produced back on 22.09.2021 and there was also no complaint raised. New vakkalath was filed on 28.09.2021. On 24.10.2021, there was a complaint filed at this court for transfer to Aluva jail.

10) In the report submitted by the Investigating Officer it is stated that the accused persons Suresh Raj (A7) and Soundrajan (A8) were involved in Q-Branch Kacheepuram Crime No. 01/2020 and they were in judicial custody in that crime. A report was filed on 29.07.2021 and the accused persons were formally arrested and produced and remanded to judicial custody on 02.08.2021. The accused Nos. 7 and 8 were taken into NIA custody from 02.08.2021 to 13.08.2021 and further custody was from 13.09.2021 to 22.09.2021. A complaint has been filed about the harassment and torture during NIA custody. The report mentions about the medical examination done and report forwarding to the court showing the fitness of the accused persons. The accused No. 7 was properly treated in the custody as ordered by the court. The accused No. 7 allowed to meet his parents at NIA office. He did not express any

complaint or grievance while he was produced before the court after completion of each NIA custody. This complaint is a fabricated version, according to the Investigating Officer.

11) It may be true that the complainant has not expressed any grievance to the court and it is equally possible that the same can be due to fear. The records shows that the petition was received by the Superintendent of Sub Jail, Aluva properly on 28.08.2021. A mail originated from the jail only on 01.09.2021. Prima facie there has been delay in forwarding the mail. Even that mail was addressed to a wrong email ID. The original was not sent also, but due to reasons explicable. There is prima facie negligence from the side of the Superintendent, Sub Jail, Aluva in not complying with the necessary directions prevailing. Therefore, separate show cause notice will be issued to the Superintendent, Sub Jail, Aluva in this regard.

12) With respect to the statement as well as petition received from Shri.Suresh Raj, fact remains that being a Special Court, this court does not have magisterial powers to proceed with the complainant under section 200 Cr.PC. Therefore, it is appropriate that the complaint (email copy as well as original letter received), statement of the accused No.7 along with necessary copies shall be sent to the Hon'ble Chief Judicial Magistrate, Ernakulam for further action necessary under section 200 Cr.PC. This alone is the course possible.

13) However, on the last day of the argument, the accused No.7 filed an additional statement in English accompanied by its transliteration in Tamil. It states that there has been inordinate delay in bringing his complaint to the court. He was denied his right to a medical examination done on him at appropriate time. He states that he reserves his right to move other appropriate forums for appropriate reliefs with regard to his factual and other grievances. He states that the CrI.MP may be closed as not pressed after considering his prayer to call for additional report from Sub Jail, Aluva.

14) Even if such an additional statement is received, I do not find that the court should not take necessary action needed to guard the rights of a detainee. Hence, despite the statement I order as follows :

- (1) Let the complaint (in original and email copy), statement recorded consequent to it, copies of necessary medical certificates obtained produced along with the custody reports be sent to the Hon'ble Chief Judicial Magistrate for the purpose of enquiry under section 200 Cr.PC. If the Chief Judicial Magistrate or any Magistrate deputed by her, feels that presence of the accused be there, as part of enquiry, the magistrate may require the presence of the accused by issuing necessary production warrant. The Magistrate may take recourse to actions available under the Code of Criminal Procedure in this regard.
- (2) Call for a report from the Sub Jail, Aluva as to why the email was sent on 01.09.2021 only. In the report, the Superintendent shall

specify the person or persons responsible for sending such mail in wrong email ID and he shall also specify whether any reply is received from the wrong email ID.

(3) Call on 31/1/2021.

Dictated to the Confidential Assistant, transcribed and typewritten by her, corrected and pronounced by me in open court on this the 17th day of January, 2022.

Sd/-
Kamanees.K.
Judge

Appendix : NIL

Id/-
Judge

// True copy //

(By Order)

Sheristadar

Typed by: jcs
Comp.by: skp

Order in
Crl.M.P No. 242/2021
in
RC No. 01/2021/NIA/KOC
Dated 17/01/2022