

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

**Present:-Shri. Kamanees K., Judge, Special Court for NIA Cases.**

Saturday, the 25<sup>th</sup> day of November, 2023 / 4<sup>th</sup> Agrahayana, 1945

**Crl. M.P No. 220 / 2023**

**in**

**S.C.No. 04/2021/NIA**

**Petitioner / Accused No. 6 :-**

Suresh Raj A @ Suresh @ Katta Suresh,  
S/o. Arasa Rathinam,  
Door No. 126, 8<sup>th</sup> Cross Street,  
Samayapuram, Irandam, Kattalai,  
Kundrathur, Chennai, Tamilnadu.

(Remand prisoner at the Central Prison, Viyyur)

By Advs. Sri. R.Rajendra Prasad, Sri. J.Jaihar David and Smt. Sunitha G.

**Respondent / Complainant :-**

Union of India represented by  
National Investigation Agency, Kochi.

By Smt. Sindhu Ravisankar, Special Public Prosecutor, NIA.

This petition having been heard on 25/11/2023 and the Court on the same day passed the following:-

**ORDER**

Suresh Raj. A @ Suresh @ Katta Suresh, accused No.6 in this case, has moved this court for grant of bail.

2) The case of the prosecution, as is evident from the records, is as follows: The Indian Coast Guard intercepted and traced out a Sri Lankan fishing

boat by name 'Ravihansi' at Arabian Sea, found in possession of huge quantities of contraband articles including narcotic drugs along with five AK-47 rifles and 1000 numbers of 9 mm ammunitions with six Sri Lankan nationals onboard. The boat along with ammunition were seized by the Narcotics Control Bureau (NCB) Sub-Zone, Kochi on 25.03.2021 and 26.03.2021 on their arrival at Vizhinjam port at Thiruvananthapuram. The case was registered by the NCB against six Sri Lankan nationals namely, L.Y.Nandana (A1), H.K.G.B. Janaka Dassppriya (A2), A.H.S. Mendis Gunasekara (A3), S.A.Namesh Chullaka Senarath (A4), Thilanka Madushan Ranasingha (A5) and Dadallage Nisanka A (A6). The seized articles and arrested six accused persons were produced at JFCM Court, Neyyattinkara by NCB and the case was transferred to the Sessions Court, Vanchiyoor, Thiruvananthapuram. On the basis of the report submitted by NCB, a case was registered on 05.04.2021 at Vizhinjam police station as Crime No.498/2021 dated 05.04.2021 under section 27 of Arms Act and section 34 of IPC for the illegal possession of arms and ammunitions before JFCM, Neyyattinkara. As per the notification of Government of India, Ministry of Home Affairs dated 27.04.2021, the National Investigation Agency took over the investigation and re-registered the case as RC 1/2021/NIA/KOC under section 7 r/w 25(1AA) of Arms Act and the FIR was submitted before this court. The investigation was taken over from Kerala police on 12.05.2021.

3) As against the petitioner herein, the charges are u/ss. 120B of IPC r/w.S.125 IPC, S.18, 20, 38, 39 and 40 of Unlawful Activities (Prevention) Act, S.120 B of IPC r/w. S.7, 25 (1AA) of Arms Act, 1959, S.8(c) r/w. S.21 (c), 23(c), 24, 27A, 28 and 29 of NDPS Act, S.120B, 125, 465 and 471 IPC, along with substantive provisions thereunder.

4) The accused is a Sri Lankan national residing at Chennai, Tamil Nadu and it is stated that investigation revealed his involvement in this crime and association with the banned terrorist organisation LTTE. He was formally arrested on 02.08.2021 when he was in judicial custody of Q Branch Kanchipuram in Crime No.1/2021.

5) After filing of the charge sheet and taking cognizance of the case SC 4/2021 the position of the accused changed as accused No.6. The contents of the allegation is that Satgunam @ Sabesan, accused No.9, a Sri Lankan refugee was an armed cadre of LTTE, migrated to India and took asylum at Chennai during 2004. Since then he associated himself with illegal activities like trafficking of narcotic drugs, hawala dealings etc. He, with the intention to further the activities of the LTTE in India and Sri Lanka and for raising funds for the LTTE, associated with Suresh Raj, the petitioner, Soundarajan, Ramesh and others, who were also active supporters of LTTE. Satkunam was also associated with Sri Lankan natives Anju, Deepa Ranjan @Ranga and a Pakistan native Haji Salim

through accused No.6 and Soundarajan since last two years for illegal trafficking of huge quantity narcotic drugs besides firearms and ammunition, to raise fund for LTTE and also to collect the fire arms and ammunition for furthering the activities of LTTE in India. This is the crux of the prosecution case.

6) On 24.11.2021, 20.10.2021, 25.11.2021 S.164 statements of Mendez Gunasekhara, Soundarajan and Ahmmed Fasly were respectively recorded. A petition for tendering pardon was filed by A3, A5 and A14 and the same is pending before the court.

7) The petitioner seeks bail on the following grounds:- The petitioner was not arrayed as an accused at the time heroin was seized. In the final report 7 accused persons are named with specific overt acts and this accused has no role in the smuggling of the heroin seized. The petitioner was implicated in the above case after the NIA took over the investigation and that too by way of confessions. He is not a member of a terrorist gang and to show his membership of a terrorist organisation or to show support to it , no evidence has been given – also in respect of raising any funds. There is no material available to make out an offence u/s.7 and 25(1AA) of the Arms Act. He was not in possession of any drug so as to attract S.8(c) r/w. S.21(c), 23(c), 24, 27A , 28 and 29 of the NDPS Act. For financing and conspiring to smuggle, the prosecution relies only on the respective confession of the arrested persons. He is a Sri Lankan national who

had to come down as a refugee. He was doing business for his own livelihood. Neither the contraband nor the arms and ammunition seized in the case are connected to the petitioner and they are not arranged by him. The petitioner never had any conspiracy to revive LTTE or to raise funds for LTTE. S.43D of Unlawful Activities (P) Act is not applicable to the present case. The only material that is available against the petitioner is the confession of the petitioner and the confessions of the co-accused which are not admissible in evidence. The prosecutor has not placed any material to show there are reasonable grounds for believing that the accusations against the petitioner are prima facie true. He is permanently residing in Chennai. His children were born in Tamil Nadu and brought up in Chennai. He is ready to produce solvent sureties and he shall not abscond or tamper evidence in any manner.

8) In the report filed objecting grant of bail it is stated that the accused is not entitled to bail and the grounds are all false. The investigation has revealed that there is sufficient evidence through the recorded statements of witnesses and the judicial confession of accused No.8 recorded u/s.164 Cr.P.C. It speaks about the involvement of the petitioner in the crime. Document seized from the accommodation of accused No.6 and the data retrieved from his digital devices and that of Soundarajan – now approver clearly proves the part of the petitioner in commission of the offence. The investigation revealed the evidence pointing

towards involvement of accused No.6, his overt acts in the crime and also about the larger conspiracy behind the commission of the crime. Accused No.6 directly involved in the crime and played a vital role. He is a narcotic drug dealer who procures narcotic drugs, arms and ammunition from countries like Iran and Pakistan and transports through the Sea route to Sri Lanka and India. He is a supporter and a member of LTTE associated with A9 Satgunam, a core cadre of LTTE and also associated with Soundarajan, approver and A8 Ramesh and others, who are active supporters of LTTE. He acted as a member of terrorist gang, conducted and attended various conspiracy meeting with Soundarajan (approver), A8 Ramesh, Deepa Ranjan Ranga, A9 Satgunam and others at various places at Tamil Nadu with intention to revive LTTE, also furtherance of its activities in India and Sri Lanka, thereby to wage war with Sri Lanka and in the process prepared to commit terrorist attacks. They conducted illegal trafficking of narcotic drugs besides arms and ammunition in large quantity to achieve their goal. A6 Suresh Raj arranged various pre-activated SIM cards and mobile phones through Soundarajan and Ahamed Fasly (approvers). In furtherance of the conspiracy A6 and A9 with the assistance of Soundarajan conspired with Anju, Deepa Ranjan Ranga and Haji Salim and arranged 300.323 Kilograms of heroin, prohibited arms-5 numbers of Type 56 rifles and ammunitions - 1000 rounds of 9 mm, for the revival of LTTE and furtherance of

its activates. A6 Suresh Raj, made initial transfer of money to Haji Salim (A13), through hawala channel with the assistance of Soundarajan (A8), approver. He accrued huge funds and assets through the sale of narcotic drugs, arms and ammunition both in Sri Lanka and India and the part of the fund has been used for furthering the activities in India and Sri Lanka. The fund raised from his illegal dealings has been received by him in India through hawala/gold with the assistance of A14, Ahamed Fasly, (approver). A part of the same had been used for funding LTTE for furtherance of its activities. He amassed huge funds along with co-accused Soundarajan, A8 Ramesh Raj, A9 Satgunam and others and converted the same into movable and immovable property with intention to liquidate for providing funds for furthering the activities of LTTE. The statement of CW77, CW75, CW76, CW79 protected witness A and CW78 will prove the association of the petitioner with Soundarajan, A8 Ramesh Raj, Ahamed Fasli, Satgunan and others. The drugs and illegal dealings of A6 Ramesh Raj and fund transfer between A6 through Ahamed Fasli and their secret meetings shall also be made known. The statement of CW72 will prove the association of A6 with A9 Satgunan and others for arranging consignment containing huge quantities of heroin, prohibited arms and ammunitions etc. The petitioner knowingly and intentionally prepared forged documents and fraudulently used the same for obtaining Indian identity cards. Various documents seized as per disclosure of A6

Ramesh Raj and also during the search clearly proves his involvement in the commission of crime and three note books of A6 seized on his disclosure contains the details of drugs, arms and ammunition dealing by him in 2020-21. Sample handwriting of petitioner A6 has been sent for forensic comparison of his handwritings. The statement of protected witness B will prove that the pre-activated SIM cards including the SIM collected by Soundarajan approver was used by A6 petitioner to contact Anju for arranging the consignment in October 2020. The statement of CW71 will prove that the SIM card was used by A6. Protected witness C will prove the affiliation of A6 with LTTE and also with co-accused Soundarajan approver, accused Ramesh and Ahamed Fasli approver and A9 Satgunan and others, their conspiracy meeting etc. The 164 statements of A8 and A14 will prove similar points. The accused was arrested from Aluva by Q Branch, Kanchipuram as he is an accused in Crime No.1/2020. He is a convicted accused in NDPS Crime No.48/1/17/2006. As per Section 43D(7), no bail shall be granted to a person accused of an offence punishable under Unlawful Activities (Prevention) Act, if he is not an Indian citizen and has entered the country unauthorized or illegally except in very exceptional circumstances. Analysis report of the digital device of the petitioner clearly shows that, the said device contains photos and video of Narcotic drugs, the images of concealing of drugs, weighing machine and photo of packet containing heroine with seal 999

which is similar to the seal found in the packets of heroin seized from the Sri Lankan fishing boat 'Ravihansi'. The petitioner was also charge sheeted for offences u/s.24 and Sec.27A of NDPS Act and therefore the bars u/s.37 of NDPS Act shall also apply.

9) The matter has been heard.

10) Following points would arise for consideration:-

- 1) Whether there exist prima facie grounds for accusation against accused No.6?
- 2) To what extent grant of bail is forbidden under the laws prevailing?
- 3) What should be the order as to grant of bail?
- 4) If so, on what and what terms?

11) **Points No.1 to 4**:- The points have been discussed together. At the outset of the discussion, the court has to be remind itself that the allegations against the accused are also u/ss. 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act and therefore, the embargo u/s.46B of the UA(P) Act shall have to come into play. In S.43D of the UA(P) Act it was goes as follows:-

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his

own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

12) The learned counsel for the accused would like to canvass the position that the evidence on hand, as found in the charge sheet and allied documents are not of a quality which will correspond to the requirement of S.43D of the UA(P) Act. According to him, the evidence tendered in this case should not be viewed in such a way that they go to build a prima facie case as required u/s.43D of the UA(P)A Act. What is required u/s.43D5 is that the court should be of the opinion that there are reasonable grounds believing that accusation against such a person is prima facie true.”

13) The position has right now been set clear as per the dictum pronounced by the Hon’ble Apex Court in *National Investigation Agency v. Zahoor Ahmad Shah Watali (2019(5) SCC 1* in the following words:-

“17. By virtue of the proviso to sub section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for

*believing that the accusation against the accused is prima facie true or otherwise. Our attention was invited to the decisions of this Court, which has had an occasion to deal with similar special provisions in TADA and MCOCA. The principle underlying those decisions may have some bearing while considering the prayer for bail in relation to offences under the 1967 Act as well. Notably, under the special enactments such as TADA, MCOCA and the Narcotic Drugs and Psychotropic Substances Act, 1985, the Court is required to record its opinion that there are reasonable grounds for believing that the accused is “not guilty” of the alleged offence....There is degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is “not guilty” of such offence and the satisfaction to be recorded for the purposes of the 1967 Act that there are reasonable grounds for believing that the accusation against such person is “prima facie” true. By its very nature, the expression “prima facie true” would mean that the materials/evidence collated by the Investigating Agency in reference to the accusation against the concerned accused in the first information report, must prevail until contradicted and*

*overcome or disproved by other evidence, and on the face of it, shows the complicity of such accused in the commission of the stated offence. It must be good and sufficient on its face to establish a given fact or the chain of facts constituting the stated offence, unless rebutted or contradicted. In one sense, the degree of satisfaction is lighter when the Court has to opine that the accusation is “prima facie true”, as compared to the opinion of accused “not guilty” of such offence as required under the other special enactments. In any case, the degree of satisfaction to be recorded by the Court for opining that there are reasonable grounds for believing that the accusation against the accused is prima facie true, is lighter than the degree of satisfaction to be recorded for considering a discharge application or framing of charges in relation to offences under the 1967 Act.”*

14) Therefore, the standard to prevail should be that of bringing out of a prima facie case against the accused holding the conclusion that the substances of accusation are prima facie true. The prosecution would rely on the statements of CW77, CW75, CW76, CW79 (protected witness A), confession statements of co-accused persons Soundarajan, Ahamed Fasli, the protected witness C (CW81) etc. Going by the statements of CW75 Karthik Raja, he states that he had gone

and meet one Robert Pious, who was a convict in the Rajiv Gandhi Assassination case. He met Suresh Raj and Sabesan in November 2019 in a concealed atmosphere. The witness states about very huge financial transactions and collection of mobile phones. The SIM cards, mobile phones, 10 lakhs collected from Fasli Bhai were entrusted to Suresh Raj along with huge cash kept in safe custody of Soundarajan. He as well as witness CW76 Saravana Kumar would mention about the hawala transactions involved with a Rs.10/- note as a token of identity. Generally, CW76 speaks about some instances of conspiracies witnessed by him. CW77 Lakshmipathy states that Suresh Raj was his regular customer. He also had knowledge about drug trafficking, but does not speak about any specific incident. Coming to CW78, he speaks about the communications of Suresh Raj with drug dealers of Pakistan and Dubai. This witness had been an aide of Suresh Raj. All these witnesses are familiar with the mysterious movements of the accused person and his dealings in drug trafficking.

15) Confession statement of Ahamed Fasli is another such statement relied on by the prosecution. He had been instrumental in the hawala transactions. This was done by way of parcels entrusted to travellers from Sri Lanka which Fasli used to collect under information given to one Yunus.

16) Soundarajan also has given a statement about his connection with Robert Pious. He mentions about a secret meeting which he also participated,

along with Sabesan in Suresh Raj's house. In that meeting, there were plans made to rebuild the LTTE. Suresh also started dealing with hawala money through him and also using his bank accounts. The witness also speaks about his as well as Suresh Raj's association with LTTE. The statement speaks about the manner in which these transactions are operated involving all these persons, the details of the drug mafia, how persons including the present accused helped one Madhush to flee from Sreelanka to India etc. The confession statement also mentions the source of money and the arms. Too many details are not repeated here, for reasons of brevity. It shall suffice to say that there are enough and more implicating materials against accused No.6 for the offences alleged generally coming from the confession statement of accused Soundarajan.

17) The fact that the pre-activated SIM cards including the SIM used by accused No.6 to contact Anju for arranging consignment in October 2020 had been collected by Soundarajan is spoken by the protected witness D. Protected witness D would speak about the association of Suresh Raj had with Soundarajan and Satgunan, and that Suresh Raj had purchased virtual SIMS using his Paytm account on different dates for his own use and the use of others. The protected witness C would speak about A6's affiliation with LTTE, the hawala business and accumulation of properties. He went to the apartment and took certain mobile phones, smart phones, Blackberry phones and Apple phones and laptops, belts

packed with gold bars weighing about 5 kilograms, a bag containing cash in 500 denominations - approximately 30 to 35 lakhs, pen camera, spy camera, pendrives, power banks etc. to his house after the arrest of Suresh Raj. He generally speaks about the conspiracy meetings as well. While CW72 would speak about association of Suresh Raj, Soundarajan and Satgunan A9, CW83 John Paul is cited to speak about association of Suresh Raj with Soundarajan and A14, Fasli Bhai. CW74 Robert Pious, according to his statement u/s. 161 Cr.P.C also speaks about the association of accused No.6 with accused No.9 Satgunan and with the proscribed organisation LTTE. Apart from that, there are statements of accused No.65 and 66 in whose name the pre-activated SIM cards were obtained using forged documents. About the fraudulent documents used as genuine by A6, CWs 129 and 130 shall also speak.

18) Apart from all these, the school transfer certificate, documents containing details of drugs, arms, ammunitions, (documents 72, 73, 74), the protected documents (201 to 207), details of pre-activated SIM cards also used by accused No.6 will suggest about his involvement in the crimes.

19) The inference possible from all these facts and circumstances brought by the materials will enable an inference that there is absolutely nothing on record to show that the accusation against accused No.6 Suresh Raj is not substantiated, and that they are revealed to be untrue. Therefore the bar under

section 43D(5) Of the Unlawful Activities (Prevention) Act will definitely bar this court from granting bail to the accused.

20) The charge also alleges of offences u/s.24, 27A of the Narcotic Drugs and Psychotropic Substances Act, and the bar u/s.37 of the Narcotic Drugs and Psychotropic Substances Act, which is clearly more rigorous than bar u/s.43D(5) of the Unlawful Activities (Prevention) Act shall also stand in the way of grant of bail.

21) Last but not least, the embargo contained in S.42D(7) of the Act shall also impede in the way of releasing the accused on bail conditions – which is 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.*

22) Admittedly, accused No.6 is not an Indian citizen and his continuance in the country has been unauthorised in so far as he had been arrested for contravention of the Foreigners Act. There are no exceptional circumstances, be it medical, social or even emotional, brought out which would justify carving an exception for the rigour of Section 43D(7) of the Unlawful

Activities (Prevention) Act.

23) A reasoning based on conjoint reading and consideration of all the facts stated supra will only enable a conclusion that the accused is not entitled to be released on bail at this stage.

*Consequently, the petition is dismissed. Issue Copy.*

Dictated to the Confidential Assistant and typewritten by him, corrected and pronounced by me in open court on this the 25<sup>th</sup> day of November, 2023.

Sd/-  
Kamanees.K.  
Judge

APPENDIX : NIL

Id/-  
Judge

// True copy //

(By Order)

Sheristadar

Typed by: jcs  
Comp.by: skp

**Order in**  
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**in**  
**S.C.No. 04/2021/NIA**  
**Dated 25/11/2023**