

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

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

Monday, the 22nd day of April, 2024 / 2nd Vaisakha, 1946

CrI.M.P No. 70/2024

in

S.C No. 04/2021/NIA

Petitioners / Accused No. 9 :-

Satkunam @ Sabesan, S/o. Sachithanandam,
Aged 49, F/No. 33, Murali Krishna Nagar,
Main Road, Valsaravakkam,
Chennai, Tamil Nadu .
Presently at R.P.No.582, Central Prison,
Viyyur Jail, Thrissur, Kerala.

By Adv. Sri. Renjith B Marar

Respondent / Complainant :-

Union of India,
represented by National Investigation Agency, Kochi

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

This petition having been heard on 22/04/2024 and the Court on the same day passed the following:-

ORDER

Accused No.9 Sri. Satkunam @ Sabesan has filed this application for bail u/s. 437 Cr.PC.

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) In the petition, copy of FIR registered by NIA has been produced. The petitioner is a Sri Lankan refugee having an Aadhar card and election id

which were seized by NIA. He has a valid PAN card. He is said to be a member of 'Anti Corruption and Crime' registered under 'Societies Act'. Copy of these proceedings of disclosure cum google plotting is the record relied on to prove his part of conspiracy. The approver Soundarajan (accused No.8) has given a statement u/s.164 Cr.P.C., which is false. The petitioner is innocent and law abiding. Petitioner has only shown the place of occurrence through google map. Soundarajan was not aware that the confession statement may be used against him during the trial of the case. Petitioner has serious medical complications including cardiovascular problems and he has undergone a bypass surgery during 2020. He has been in judicial custody for more than two years. No further recoveries are to be made at his instance. He is ready to abide by any conditions of bail. He has not sought for bail by any other bail application

4) The bail application was stoutly objected to by the NIA by filing a counter. Depicting the facts of the case the charge sheet states that the allegations against accused No.9 are under Section 120B IPC, Sections 18 and 20 of the Unlawful Activities (Prevention) Act, 1967, S.120B IPC r/w.7 and 25(IAA) of Arms Act, 1959, S.8(c) r/w.21(c), 23(c), 24, 25, 27A, 28 and 29 of the NDPS Act. The counter states that during the investigation the incriminating role played by accused Satkunam in the larger conspiracy was revealed. The charge sheet was filed on 15.12.2021. The case was filed as SC 4/2021 and this accused was placed as accused No.9. The accused took asylum in India, after

serving as an armed cadre of the proscribed organisation LTTE. He was associated with various illegal activities such as trafficking of narcotic drugs, hawala dealings etc. As he was a core cadre of the proscribed organisation LTTE, he associated with accused No.6 Soundarajan and accused No.8 Ramesh who were other active supporters of LTTE since 2018. This was for furthering the activities of the organisation. He was also associated with Sri Lankan natives Anju (accused No.11), Deepa Ranjan @ Ranga (accused No.12) and a Pakistan native Haji Salim (accused No.13 in RC 01/2021), apart from Suresh Raj and Soundarajan. For the last two years they were illegally trafficking huge quantities of narcotic drugs besides firearms and ammunition to raise funds for the proscribed organisation. The Aadhar card and election ID are not genuine. There was a case registered against that persons including the present petitioner obtained Indian identity documents spuriously and used them as genuine, as crime No.1/2020. It is wrong to say that prosecution relies mainly on annexure A3 disclosure cum google plotting. The same is corroborated with the CDRs of the respective accused and S.164 statements of witnesses. There are many cases registered against him. Judicial confessions of Soundarajan and Ahamed Fasly recorded u/s.164 Cr.P.C. will prove his association with accused No.6 Suresh Raj, accused No.8 Ramesh, accused No.11 Anju, accused No.12 Deepa Ranjan, accused No.13 Ahamed Fasly and others in committing the offences. There are also statements u/s.161 Cr.P.C. of CW77, CW41, CW76, protected witness A,

CW78, CW84, CW74, CW72, CW73, protected witness D, protected witness C, CW88, CW87, besides documentary and scientific evidence to prove the guilt of the accused. Judicial confession of accused No.8 clearly proves his involvement. The data retrieved from digital devices of accused No.9 and Soundarajan also clearly proves his part in the commission of the crime. He was an armed cadre of LTTE in Sri Lanka and was a member of the security ring of the slain LTTE leader Prabhakaran. Being a core cadre of LTTE, he got associated with Suresh Raj, Soundarajan and Ramesh A - also others who are active supporters/members of LTTE, he formed a terrorist gang and became a member of the gang. He conducted and attended various conspiracy meetings with accused No.6 Suresh Raj, Soundarajan (approver A8) and accused No.8 Ramesh A - also accused No.12 Deepa Ranjan @ Ranga. Those meetings were for furthering the activities of LTTE in India and Sri Lanka. The terrorist gang decided to conduct illegal trafficking of narcotic drugs, besides arms and ammunition in huge quantities to achieve their goal. In furtherance of the larger conspiracy accused Nos.9 and 6 with the assistance of approver Soundarajan, conspired with accused Anju, Deepa Ranjan Ranga, Haji Salim and others to arrange 300.323 Kilograms of heroin, proscribed arms (56 rifles and ammunitions -1000 rounds) for the revival of LTTE and furthering its activities in India and Sri Lanka and also for raising funds for LTTE. The same is a terrorist act. He accrued huge funds and assets by sale of narcotic drugs, arms

and ammunitions both in Sri Lanka and India and part of funds had been used for furthering the activities of LTTE in India and Sri Lanka. The fund raised from illegal dealings was received in India through gold/hawala with the assistance of Ahmed Fasly. He amassed huge funds and converted the same into movable and immovable property with the intention to liquidate the same for providing funds for furthering the activities of LTTE in India and Sri Lanka. His health condition is satisfactory. He is a foreign national, who entered into India unauthorisedly and in view of bar u/s.43D(7) he is not entitled to get bail. There are no special reasons to be recorded in order to grant bail. There is a case pending for violation of the Foreigners Act. There are no reasonable grounds to believe that accusation is prima facie untrue. He is equally charged for offences u/s.8(c) r/w. Sections 21(c), 23(c), 24, 27A, 28 and 29 of the NDPS Act. The main considerations for grant of bail have been elaborately discussed in **NIA v. Zahoor Ahmad Shah Watali (2019) 5 SCC 1** which are conspicuously absent in this case. The petitioner is only abusing the process of law with ulterior motives.

5) Matter has been heard.

6) Following points would arise for consideration.

1. Whether there exist any sufficient reasons to prima facie find that the accusation against this accused is based on insufficient materials and is not true?
2. To what extent the bar u/s.43D of the Unlawful Activities (Prevention) Act shall stand in the way of grant of bail?

3. What orders to be passed?

Points No.1 and 2:-

7) Accused No.9 Satkunam @ Sabesan seeks bail in this case stating that the material against him is rather very much insufficient to book him for the offences alleged. He points out that there are no recoveries of any contraband seized from his possession and that the confession statement of Sri. Soundarajan (approver) is not to be relied upon for the reason that initially he was not aware that the confession statement may be used against him during the trial of the case. According to the petitioner, he is a member of a registered society called 'Anti Corruption and Crime' for which he holds an identity card. The card is significantly irrelevant in the considerations here, all would agree.

8) Admittedly, the petitioner is a Sri Lankan citizen to whom refuge has been conferred by the government. The petition states that he holds an Aadhar card and an election ID card which are both seized by the NIA. He has got a valid PAN card issued by the Income Tax Department of India as well.

9) The prosecution contends, primarily pointing out that there are cases against him for spuriously obtaining Indian identification records and his status is that of a Sri Lankan national having entered Indian territories in an unauthorised manner. Calling upon the bar u/s.43D(7) of the Unlawful Activities (Prevention) Act, the learned public prosecutor, NIA stresses on the

point that no bail can ever be granted to the accused. Section 43D(7) goes 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.”

10) Admittedly, the petitioner is not an Indian citizen and there should be exceptional circumstances to be recorded in the order, if the court has to grant bail. Only aspect canvassed is that the accused is a heart patient, having undergone medical procedures connected with cardiological references. For that no records have been produced as well.

11) Merits of the case against the accused are heavily under challenge in this matter. The petition states that two main materials against him will not go in his support. One is a proceedings of disclosure cum google plotting of accused Sri. Satkunam dated 18.11.201. It reads that during the custodial period there was a voluntary disclosure with respect to certain conspiracy meetings. In the presence of civil witnesses on 18.11.2021 at 11:00 hours the proceedings was done. The accused voluntarily agreed to show the places on google map where he met with the co-accused and had meetings to commit the crimes. Accordingly, google map was opened by the petitioner and he plotted highlighted places mentioned therein. The details of such places have been

described with screenshots in his said proceeding. It is alleged that this proceeding is inadmissible in evidence u/s.27 of the Evidence Act or even as a subsequent conduct. The plotting of the precise place/places in the google map is a novel method in investigation. The case of the prosecution is that the same corresponds with all detailed records secured by them, assuring presence of the accused in or around the place where the conspiracy took place.

12) The main piece of evidence is definitely not the location plotting but the confession statement of accused Soundarajan. On going through the confession statement of accused Soundarajan, he seems to be knowledgeable that the confession statement could be used against him in an impending trial. The statement runs into many pages and it speaks about his association with the present petitioner and about conspiracy meetings in order to revive the functioning of the proscribed terrorist organisation LTTE (Liberation Tigers of Tamil Eelam). He also speaks about plans for huge drug deals and arms deals in Sri Lanka to raise money for LTTE. He used to remit amounts to Suresh through his wife's and son's account as per the instruction of accused Suresh and Sabesan. It mentions the deposit of money in his account, taking SIM cards even from African countries, dealings in gold bars and cash, the nature of drugs the present petitioner used to purchase, hawala dealings etc. The statement also speaks about The petitioner's connections with the drug mafia heads in Sri Lanka, receipt of Rs.3 crores to Sabesan and Suresh received through Ahamed

Fasly. It speaks about accused Anju. On going through the statement, many details are very clear which will directly speak about the involvement of accused No.9 in terrorist activities. It also speaks about the meeting conducted on 01.01.2021 under the cover of the birthday party of Nakulan's daughter in Lee Crystal Hotel in Chennai. He gave his versions up till he was arrested by the NIA in Kochi.

13) Primarily, the S.164 statement of Soundarajan itself is sufficient to find prima facie ground for accusation of accused No.9. The position of law with respect to the application of Section 43D of the Unlawful Activities (Prevention) Act has been given in **NIA v. Zahoor Ahmad Shah Watali (2019)**

5 SCC 1: : MANU/SC/0458/2019 as follows:-

“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) When applying this standard of reasonable grounds for believing that the accusation against accused No.9 is prima facie true, the S.164 statement of the approver Soundarajan gains huge importance. Added to that, there are materials to corroborate his version as well, like other statements u/s 164 CrPC, the Call Detail Records as well as google plotting etc. The threadbare analysis of the entire evidence is not the order to follow at this point of time. It shall be sufficient to record that there exists sufficient ground to find that the accusation against the present petitioner is founded on good materials.

15) For these reasons, there are no materials to find that the accusation against the present accused is untrue, and that there exists a bar in the grant of bail u/s.43D(5) and 43D(7) of the Unlawful Activities (Prevention) Act. Point

numbers 1 and 2 are found in favour of the prosecution. Naturally point number 3 does not arise for consideration.

Resultantly, the petition is dismissed.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 22nd day of April, 2024.

Sd/-
Kamanees.K.
Judge

APPENDIX : NIL

Sd/-
Judge

// True copy //

(By Order)

Sheristadar

Typed by: akr
Comp.by: jcs

Order in
Crl.M.P No. 70/2024 in
S.C No. 04/2021/NIA
Dated 22/04/2024