

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

Present:- Shri. N. Seshadrinathan, Judge, Special Court for NIA Cases.

Tuesday, 17th day of December, 2024 / 26th Agrahayana, 1946

CrI.M.P No. 215/2024

in

S.C No. 04/2021/NIA

Petitioner / Accused No. 6 :-

Suresh Raj A., @ Suresh @ Kata Suresh
S/o Arasa Rathinam, Door No.126,
8th Cross Street, Samayapuram, Irandamkattalai,
Kundrathur, Chennai, Tamil Nadu.

By Adv. Sri. Siva Perumal

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 17/12/2024 and the Court on the same day passed the following:-

ORDER

This is an application filed by the 6th accused for bail u/s. 483 of BNSS, 2023.

2. Petition averments in brief may be noticed:- On getting information, the Indian Coast Guard intercepted and traced out a Sri Lankan fishing boat

'Ravihansi' bearing Reg. No.IMUL-A-0040-TLE on 18.03.2021 at Arabian Sea, which was found with huge quantity of contraband articles along with five AK-47 rifles and 1000 numbers of 9 MM ammunitions illegally and without proper documents besides on board six Sri Lankan Nationals. The said Sri Lankan boat 'Ravihansi' along with contraband articles, arms and 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, Kerala. Accordingly, a case was registered by the NCB, South Zone, Kochi vide NCB-OR-2/2021/NCB/SZ/COK-117 dated 27.03.2021 against six Sri Lankan Nationals. Only six persons, who are named in the petition, were on board of the fishing boat 'Ravihansi'.

3. The seized articles and arrested six accused persons were produced before the Judicial First Class Magistrate 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, 1959 and Section 34 of IPC against the six Sri Lankan Nationals for the illegal possession of five AK-47 rifles and 1000 numbers of 9 MM ammunitions and FIR was submitted before the Temporary Judicial First Class Magistrate Court, Neyyatinkara, Thiruvananthapuram. During the investigation,

Vizhinjam Police altered the sections of Crime No.498/2021 as Section 7 r/w. 25 (IAA) of Arms Act, 1959.

4. Considering the nature and gravity of the offence, the National Investigation Agency took over the investigation as per the notification of the Government of India, Ministry of Home Affairs, CTCR Division vide order No.11011/29/2021/NIA dated 27.04.2021, and re-registered the case as RC 01/2021/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.

5. Accused 1 to 6 were formally arrested by the NIA at Central Jail, Poojappura on 11.06.2021, after getting permission from the 1st Additional Sessions Court, Vanchiyoor, Thiruvananthapuram. They were produced before this court on 21.06.2021 on production warrant issued by this court and they were taken into NIA custody and they were subjected to questioning.

6. During investigation, the incriminating role played by A6 the petitioner and others has been revealed and the mobile phone and SIM cards which were used by those suspects were also seized during the investigation. The owner of the above said fishing boat has contact with one suspect at abroad. The petitioner and Soundarajan were in contact with that suspect at abroad for committing the offence by using various mobile phones and pre-activated SIM

cards which were obtained fraudulently in the name of other persons without their knowledge.

7. Reports were given to add accused 7 and 8 and the accused 7 and 8 were produced before the court on 02.08.2021 on the strength of the production warrant issued against them. On the basis of the remand report, they were remanded and sent to police custody from 02.08.2021 to 09.08.2021 and further police custody from 09.08.2021 to 13.08.2021.

8. During the police custody, based on the disclosure statements of A7 and A8, the social media/email, extraction proceedings of A7 and A8 has been carried out in the presence of witnesses. The entire data of the social media and email accounts of accused 7 and 8 were not able to be downloaded. The accused is a Sri Lankan National/ Indian residing at Chennai, Tamil Nadu and it is stated that investigation revealed his involvement to this crime and association with the banned terrorist organisation LTTE. He was arrested on 02.08.2021 when he was in judicial custody of Q Branch, Kancheepuram in Crime No.1/2021. It is alleged that the accused have committed offence punishable under various sections of Chapter IV and VI of UA(P) Act and accordingly they were charged under various sections of Chapter IV and VI of UA(P) Act and various sections of NDPS Act and charge sheet has been filed on 15.12.2021.

9. After filing of the charge sheet and taking cognizance of the case SC 4/2021, the position of the accused changed as 6th accused and originally his rank was 7.

10. The petitioner is seeking bail for the following reasons:- The petitioner was not arrayed as an accused at the time Heroin was seized. The petitioner has no role in the smuggling of Heroin seized when other accused persons are named with specific overt acts. No one is to be punished for the crime of another's. The petitioner was implicated in the case after the NIA took over the investigation and that too on the strength of confession statement given by one of the approvers, who was promised to be given pardon and for the same approver, petition is pending. He is not a member of terrorist gang and there is no scrap of paper to show that he is having membership with terrorist organisation or to show support. There is nothing to show that funds were raised by the petitioner. There is no material available to make out an offence u/s.7 and 25(IAA) of the Arms Act. He was not in possession of any drug so as to attract Section 8(c) r/w. Section 21(c), 23(c), 24, 27A, 28 and 29 of the NDPS Act. The petitioner was doing business for his own livelihood and no contraband articles or arms and ammunition were seized from the petitioner. The petitioner never had any conspiracy to revive LTTE or to raise funds for LTTE. Section 43D of UA(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 prosecution has not placed any material to show that there are reasonable grounds for believing that the accusations against the petitioner are prima facie true. The petitioner's children were born in Tamil Nadu and brought up in Chennai. The petitioner is a law abiding citizen of India and he is neither a LTTE nor a supporter of LTTE. Hence the petitioner may be released on bail.

11. NIA filed counter opposing the petition on the following grounds:-
The petitioner/accused No.6 is charge sheeted for the offence under Section 120B of IPC r/w. Section 125 IPC, 465 and 471 of IPC, Sections 18, 20 , 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967, Section 120B IPC r/w. Section 7 and 25(IAA) of Arms Act, 1959, Section 8(c) r/w.21(c), 23(c), 24, 27A, 28 and 29 of the NDPS Act. The brief facts of the petition averments are truly stated in the objection. It is also true that considering the gravity of the offence, the Government of India, Ministry of Home Affairs, CTCR Division issued an order directing the NIA to take over the investigation. The investigation was taken over by the NIA from the Kerala Police on 12.05.2021. After investigation, final report was filed against A1, A2, A4, A5 and A6 for the offence punishable u/s. 120B of IPC r/w. Section 125 IPC, Section 120B IPC, Sections 18, 20 , 38, 39 and 40 of the Unlawful Activities (Prevention) Act,

1967, Section 7 r/w. 25(IAA) of Arms Act, 1959, Section 8(c) r/w.21(c), 23(c), 24, 27A, 28 and 29 of the NDPS Act. As against the petitioner the offences charged are under Section 120B of IPC r/w. Section 125 IPC, Sections 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967, Section 120B IPC r/w. Section 7 and 25(IAA) of Arms Act, 1959, Section 8(c) r/w.21(c), 23(c), 24, 27A, 28 and 29 of the NDPS Act and Section 120B, 465 and 471 IPC. Investigation revealed that the petitioner, who is a Sri Lankan National is residing at Chennai and his involvement in the crime is clearly revealed. The investigation further reveals his involvement and association with banned terrorist organisation LTTE. Accordingly, he was formally arrested on 02.08.2021, while he was in judicial custody in Q Branch, Kancheepuram in Crime No.1/2020. The petitioner and other accused have committed offences punishable under various sections of Chapter IV and VI of UA(P) Act and accordingly they were charged under various sections of Chapter IV and VI of UA(P) Act and various sections of NDPS Act and charge sheet has been filed on 15.12.2021. The contention that the petitioner is a law abiding Indian citizen or bro Indian is false. The petitioner is involved in multiple narcotic cases and other criminal cases in India, which itself is a proof of his being a criminal and not a law-abiding individual. His presence in India itself is illegal. The petitioner was convicted in NDPS case registered by NCB in CC 22/2007

(F.No.48/1/17/2006-NCB-MDS) on 10.11.2011 and was sentenced to undergo RI for ten years by the Court of Special Judge - I, Additional Special Court under NDPS Act, Chennai City. There are clinching evidence as against the petitioner and the trial can be expedited. Since the petitioner is also charge sheeted for the offence u/s.24 and 27 of NDPS Act, as per Section 37 of the NDPS Act the accused shall not be released on bail unless the conditions therein were satisfied. The statements given by various witnesses will prove association of the petitioner with other accused, the drugs and other illegal dealing of the petitioner, the fund transfer between himself and other accused and also as to secret meetings. Pre-activated SIM cards were used by the petitioner to contact other accused for arranging consignment in October, 2020. Similarly, his affiliation with LTTE and also with co-accused Soundarajan can be established. Various documents seized on the strength of the disclosure statement of the petitioner clearly proves his involvement in the commission of crime and especially, 3 note books (D72 to D74) are sufficient to show his involvement. Sample handwriting of the petitioner has been sent for forensic comparison of his handwriting. Analysis report of the digital device of the petitioner clearly shows that the said device contains photos and videos of Narcotic drugs, the images of concealing of drugs (Heroin), weighing machine and photo of packet containing Heroin with seal 999 which is similar to the seal found in the packets

of Heroin seized from the Sri Lankan fishing boat 'Ravihansi', which clearly proves the involvement of the petitioner in the instant crime. The petitioner is also involved in offences under Sections 38, 39 and 40 of the UA(P) Act and also since there is prima facie material to show his involvement, the bar u/s.43D of the UA(P) Act in granting bail to this accused comes into play. So the petitioner is not entitled to get bail. For these reasons, petition is to be dismissed.

12. Whether the petitioner is to be enlarged on bail is the moot question question.

13. For the purpose of adjudication of the petition, both sides were heard.

14. **The Point**:- Going by the prosecution case, the petitioner is a Sri Lankan National who is residing in Tamil Nadu. The petitioner is charged with offences u/s. 120B of IPC r/w. Section 125 IPC, Sections 18, 20 , 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967, Section 120B IPC r/w. Section 7 and 25(IAA) of Arms Act, 1959, Section 8(c) r/w.21(c), 23(c), 24, 27A, 28 and 29 of the NDPS Act and Section 120B, 465 and 471 IPC.

15. In the instant case, the Indian Coast Guard intercepted and traced out a Sri Lankan fishing boat 'Ravihansi' bearing Reg. No.IMUL-A-0040-TLE

on 18.03.2021 at Arabian Sea, which was found with huge quantity of contraband articles along with 300.323 Kgs of Heroin along with five AK-56 rifles and 1000 numbers of 9 MM ammunitions illegally and without proper documents and all these persons found on board were Sri Lankan Nationals. On the basis of the confession given by the co-accused and upon investigation, the investigation agency could realise the involvement of the petitioner in this crime and his association with banned terrorist organisation LTTE. It is also alleged that the petitioner has committed the offences punishable under various sections of Chapter IV and VI of UA(P) Act and accordingly they were charged thereunder. It is stated in the counter that the petitioner was convicted in NDPS case registered by the NCB in CC 22/2007 on 10.11.2011 and was sentenced to undergo RI for ten years by the Special Judge-1, Additional Special Court under NDPS Act, Chennai City. The learned prosecutor argued that there are abundant materials to prove the involvement of the petitioner. His close association with other accused in drug deals, fund transfer and further that he had used pre-activated SIM cards for arranging the consignment during October, 2020. The learned prosecutor further argued that there are materials to prove the affiliation of the petitioner with LTTE and also with co-accused Soundarajan (approver) and other accused. The confession of 8th accused and 14th accused and their 164 statements will make things more clear. Various documents were seized from the

petitioner on the strength of his disclosure statement and the learned prosecutor vehemently argued that this will prove the involvement of the petitioner to the crime. The learned prosecutor argued that D72 to D74 notebooks seized from the possession of the petitioner on the strength of his disclosure statement contain the details of drugs, arms and ammunition dealt by him during 2000-2021. The digital evidence was also shown various photos and videos of Narcotic drugs, the images of concealing of drugs (Heroin), weighing machine and photo of packet containing Heroin with seal 999 which is similar to the seal found in the packets of Heroin seized from the Sri Lankan fishing boat 'Ravihansi' and the learned prosecutor argued that the direct involvement of the petitioner to the crime is established. The learned prosecutor also argued that the petitioner is involved in offences u/s.38, 39 and 40 of the UA(P) Act and there is bar u/s.43D of the UA(P) Act in granting bail.

16. Section 43D(7) states that,

“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.”

17. The learned prosecutor also argued that one case is pending against the petitioner for violation of the Foreigner's Act as he is not an Indian citizen.

Considering the nature of the case and considering the precedents on the point, this court is not inclined to release the petitioner on bail and hence the petition fails.

In the result, petition is dismissed.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 17th day of December, 2024.

Sd/-
N. Seshadrinathan
Judge for NIA Cases

APPENDIX : NIL

Sd/-
Judge for NIA Cases

// True copy //

(By Order)

Sd/-
Sheristadar

Typed by: akr
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Order in
Crl.M.P No. 215/2024 in
S.C No. 04/2021/NIA
Dated 17/12/2024