

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

Present:-

Shri. N. Seshadrinathan, Judge, Special Court for NIA Cases.

Saturday the 21st day of December, 2024 / 30th Agrahayana, 1946

Crl.M.P No. 243/2024

in

S.C.No. 04/2021/NIA

Petitioners / Accused Nos. 2,3 &4 :-

- 1) HKGB Janaka Dasappriya, aged 45,
S/o. HGB Peyasena, resident of 128,
Modarawatta Kudawelle West,
Nakulugamuwa, Dodanduwa, Sri Lanka.
- 2) S.A Namesh Chullaka Seranatha, S/o. S.M Pamiss,
Resident of Mahamodhara Katudampe,
Dodanduwa, Sri Lanka.
- 3) Thilanka Madushan Ranasingha, Aged 32,
S/o. Sarath Ranasingha, resident of 239/7,
Gulagoda Watta, Katudampe, Dodanduwa, Sri Lanka.

By Adv. Sri. Omar Salim

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 this day
passed the following:-

ORDER

This is an application filed by accused No.2, 3 and 4 for bail u/s. 483 of Bharatiya Nagarik Suraksha Sanhita, 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 near Minicoy Island, Lakshadweep which was found with huge quantity of contraband articles including 300.323 Kilograms of Heroin 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 and was subsequently brought to Vizhinjam, Thiruvananthapuram, Kerala on 25.03.2021.

3. 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 under Section 27 of Arms Act, 1959 and Section 34 of IPC.

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 on 27.04.2021, and re-registered the case as RC 01/2021/NIA/KOC under section 7 r/w. 25(1AA) of Arms Act.

5. The NCB arrested the petitioners 1, 2 and 3 on 27.03.2021 and subsequently arrested formally by the NIA on 11.06.2021. They were produced before the 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. As per the prosecution case, prior to 18.03.2021, a series of event and conspiracies occurred leading to the activities in question. The aim of conspiracies that emerged were intertwined to revive and raise funds for the LTTE, the banned terrorist militant organisation. In November 2019, A15, A7 and A8 had secret meetings with the convicted accused of Rajiv Gandhi Assassination. Later on, A7 and A8 approached A12 through social media to arrange narcotic drugs. Subsequently, the conspiracy then expanded to include the illegal trafficking of drugs and the arrangement of arms and ammunition from abroad. In August 2020, A7, A10 and A12 took responsibility for the clearance of the consignment. The arrangement of pre-activated SIM cards for the case of communication was through A8 and A14 and the initial transfer of money through the Hawala channel with the aid of A8 was carried out by A7. By March, 2021, the conspiracy loomed large within A7, A8, A10 and A15 with A11, A12 and A13 thereby successfully arranging a huge quantity. A9 was involved in the later stage, for collecting consignment at Arabian Sea. In March 2021, A9 conspired with A1 to A6, providing his ship for carrying the consignment, and handed over the Thuraya Satellite phone for secret communication. A9 also offered 5 lakh Sri

Lankan Rupees and an advance amount of Rs.10,000/- Sri Lankan Rupees to A1 to A6. It is alleged that, from the location intimated by A9, they collected a large quantity of arms and ammunition from the associates of A13.

6. The petitioners are seeking bail for the following reasons:- The petitioners are innocent of the case framed against them and have no connection with the above said crime. The petitioners have not committed any offences alleged by the prosecution. Petitioners are in custody for more than 1289 days. The petitioners are fishermen striving hard to eke out their livelihood. They have been wrongly framed with accusations made against them based on misleading or fabricated evidence, suggesting that the charges brought forward do not reflect their actual involvement in the alleged activities. The petitioners are enduring prolonged detention in a foreign land far from their families and support systems. Such an extended imprisonment, without the opportunity for a fair and timely trial, raises serious humanitarian concerns, as it not only subjects the petitioners to significant emotional and psychological distress but also infringes upon their dignity and basic human rights. The protected witnesses CW79 to CW82 have not enumerated anywhere the involvement of the petitioners herein. The prosecution has failed to provide any concrete evidence or factual basis to establish that the petitioners had any form of communication, collaboration or involvement with the other accused individuals. There is no indication of any relationship, direct or indirect, between the petitioner and the co-accused that

could substantiate the charges or link the petitioner to the alleged conspiracy or with that of the terrorist organisation LTTE. The custody of the petitioners will not serve any purpose for the prosecution except the same will put the petitioners and their family into sever damage, loss and pain. The petitioners have been falsely trapped in the crime which caused much prejudice and loss to them. The petitioners are willing to abide by any conditions that may be imposed by this court and will not influence witnesses and shall be present before the court and Investigating agency when required. The petitioners will not tamper with the evidence and will not abscond from the proceedings. The petitioners are ready to furnish sufficient sureties as the court requires. Hence the petitioners may be released on bail.

7. NIA filed counter opposing the petition on the following grounds:-
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. 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.

8. After investigation, final report was filed against A1, A2, A4, A5, A6, A7, A10 and A15 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, 120B r/w. 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. Section 125 IPC, Sections 18, 20, 38, and 40 of UA(P) Act, 1967. Investigation revealed that the petitioners, who are Sri Lankan Nationals and their involvement in the crime is clearly revealed. The investigation further reveals their involvement and association with banned terrorist organisation LTTE. Accordingly, the were formally arrested on 02.08.2021. The seizure of prohibited weapons and narcotic drugs from the vessel clearly indicates that competitors had collectively and individually been the part of the criminal act, manifesting their intention to subvert he tranquility of the country. The petitioners being foreigners had acted in furtherance of the deceitful designs for

the proscribed terrorist organisation LTTE. Hence it can be categorically stated that the petitioners have been involved in offences under Sections 43D(5) of the UA(P) Act. The petitioners 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 they are fishermen striving hard to eke out their livelihood is not believable as per the evidence adduced in this case. The petitioners under the leadership of A1 had knowingly and willfully participated in the crime by transporting contraband articles, viz, narcotic drugs, arms and ammunition to Sri Lanka and India in furtherance of the conspiracy hatched to revive the proscribed terrorist organisation LTTE. There are clinching evidence as against the petitioners and the trial can be expedited. Since the petitioners are 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 petitioners with other accused, the drugs and other illegal dealing of the petitioners, the fund transfer between themselves and other accused and also as to secret meetings. Pre-activated SIM cards were used by the petitioners to contact other accused for arranging consignment in October, 2020. Similarly, their affiliation with LTTE and also with co-accused Soundarajan can

be established. Various documents seized on the strength of the disclosure statement of the petitioners clearly proves their involvement in the commission of crime. The petitioners are 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.

9. Whether the petitioners are to be enlarged on bail is the moot question question.

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

11. **The Point**:- Going by the prosecution case, the petitioners are Sri Lankan Nationals who are residing in Tamil Nadu. The petitioners are 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..

12. 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 petitioners have committed the offences punishable under various sections of Chapter IV and VI of UA(P) Act and accordingly they were charged thereunder. The learned prosecutor argued that there are abundant materials to prove the involvement of the petitioners. Their 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 petitioners 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 petitioners on the strength of their disclosure statement and the learned prosecutor vehemently argued that this will prove the involvement of the petitioner to the crime. The learned prosecutor also argued that the petitioners are 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.

13. 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.”

14. Considering the nature of the case and considering the precedents on the point, this court is not inclined to release the petitioners 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 21st day of December, 2024.

Sd/-
N. Seshadrinathan
Judge for NIA Cases

APPENDIX : NIL

Sd/-
Judge for NIA Cases

// True copy //

(By Order)

Sd/-

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Order in
CrI.M.P No. 243/2024
in
S.C.No. 04/2021/NIA
Dated 21/12/2024