

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

Present:-

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

Wednesday, the 25th day of May, 2022 / 4th Jyaishta, 1944

Crl.M.P No. 66/2022

in

SC No. 4 / 2021

(R.C No. 01/2021/NIA/KOC)

Petitioner / Accused No. 8 (Accused No. 10 in R.C.) :-

Ramesh.A, aged 37 years,
S/o. Arasarathinam,
resident of Madampitiya, Modara, Colombo – 5
presently residing on a rented accommodation
at House No. 312/A, (AVRA-14) Thekkanath House,
Athani P.O, Aluva, Ernakulam District.

By Adv. Sri. P.M.Ziraj.

Respondent / Complainant :-

Union of India,
represented by National Investigation Agency, Kochi

By Sri. Arjun Ambalapatta, Senior Public Prosecutor, NIA.

This petition having been heard on 19/05/2022 and the Court on this day
passed the following:-

ORDER

1) The accused No.10 in the FIR stage and the accused No.8 in the
Final Report Shri.Ramesh.A has filed this petition under section 439 CrPC for
grant of regular bail in this case.

2) The prosecution case in short 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 9mm ammunitions with six Sri Lankan nationals onboard. The boat along with ammunitions 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.Nameesh 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. The accused were formally arrested by the NIA on 11.06.2021 at Central Jail, Poojappura. They were produced before this court on 21.06.2021 on a production warrant issued by the court in CrI.MP No.99/2021. The accused persons were taken into NIA custody from 21.06.2021 to 28.06.2021 and further extended custody were given to the NIA. They were produced before the court on 02.07.2021 and were remanded back.

3) The petition states that the petitioner is the brother of the 7th accused who had no role with any of the alleged offences. When the 7th accused was arrested, the petitioner was also taken to custody with allegation that he overstayed in India violating Foreigner's Act (Crime No. 515/2021 of Nedumbasery.P.S). After 60 days of custody he was released on bail and on the day of release he was again taken into custody by NIA and arrest recorded on 07.09.2021 and he was produced on 08.09.2021. The prosecution version is that the accused had conspired at various places in India and abroad by various means of communication besides personal meetings, collected prohibited arms and ammunitions and associated with proscribed terrorist organisation called LTTE for furthering its activities in India and abroad. There is also allegation

that he accrued funds for the proscribed organisation, in furtherance of the conspiracy hatched in which he was part. He had been left to the custody of National Investigation Agency for 10 days and for an extended custody later on. The petitioner is a business man doing whole sale business in textiles for men's and kids by name 'Akshaya & Blessed Fashion', Pallavaram Main Road, Chennai and there can be substantial transactions through the account of petitioner which is only natural. Each and every transaction through the account has sufficient source which is printed against each transaction. None of the persons who made the transactions have been made as an accused. Except the mere statement that the petitioner has involvement, there are no records produced to substantiate the same. Simply because he happened to be the brother of one of the accused persons, he was made as an accused. Wife of the petitioner is pregnant and they have small children as well. The father is ailing and presently hospitalised. His mother is continuing treatment. The income from business used to be the sole income for the entire family. The remand period is over and he has undergone sufficient police custody. All the allegations levelled against him are wrong and baseless. He is innocent of the charge alleged against him. CrI.MP 184/21 had been filed by him which was dismissed by order dated 27.10.2021. CrI.MP No. 224/21 was later filed and that was also dismissed on the ground that the investigation is not completed.

The investigation has now been completed by the National Investigation Agency and the case has been taken to file as SC No.4/2021. There are changed circumstances by the filing of the charge sheet. He has not moved any application for bail other than these applications.

4) The petition is stoutly objected by the National Investigation Agency by filing objection as follows. This is the third bail application, based on very same grounds as stated in the first and second bail applications which were promptly dismissed. The petition has been filed to cause delay to the trial. It is stated that the investigation revealed that the accused persons Suresh Raj A and Soundarajan have played important role in the larger conspiracy to commit the crime. The final report has been filed against the accused No.10 alleging offences under section 120B of IPC r/w section 125 of IPC, section 120B of IPC, sections 18, 20, 38, 39 & 40 of UA(P) Act, 1967, section 120B of IPC r/w section 7 and 25(1AA) of Arms Act, 1959, sections 8(c) r/w sections 21(c), 23(c), 24, 27A, 28 and 29 of NDPS Act, section 125 of IPC, sections 18, 20, 38, 39 & 40 of UA(P) Act, 1967. There is enough and more material to show that the accused No.10 has committed offences charged with. During investigation it was revealed that the petitioner (a Srilankan National), residing in Athani, Aluva, was examined and he disclosed his involvement in this crime and his association with the banned terrorist organisation LTTE. He revealed the

incriminating role played by him and various suspects in India and abroad who are part of the larger conspiracy. In the objection report filed it is submitted that prosecution is satisfied that the accused had conspired at various places in India and abroad for committing the offence by various means of communications, many personal meetings, collecting prohibited arms / ammunitions / narcotic drugs, associating with members of LTTE for furthering its activities in India and abroad and in the process accrued funds for LTTE. MLAT request regarding details of accused and suspects is under process. Origin and destination of arms and ammunitions seized have to be understood. The digital devices seized during investigation and data extracted from e-mail/social media accounts are voluminous. The preliminary analysis revealed various incriminating materials related to the offence. Analysis of Call Data Records is also under progress. Searches were conducted at Chennai and Kerala. Specimen handwriting analysis is another point. There is a handwritten diary mentioning the dealings of drugs. The places where he conducted conspiracy was pointed out by the petitioner. Two mobile phones were recovered from the rented accommodation of the accused No. 10 and those were forwarded to C-DAC for analysis. An overall analysis of the facts and evidence would point towards the involvement of the accused No.10 and his overt acts in the crime as well as larger conspiracy for the same. He is directly involved and has played a

vital role in furtherance of the activities of LTTE. There is prima facie materials to show his involvement and the bar under section 43D of the UA(P) Act would stand in the way of granting of bail. He is likely to abscond and leave the country if he is released on bail. He will not be available during the time of investigation. The bail application against the accused No.10 is therefore prayed to be dismissed.

5) There is enough evidence to prove his role. The statements of protected witnesses, statement of CWs 75, 76, 77, 83, 84, statements of Soundarajan under section 164 Cr.PC and the statement of Fasli Bhai (A14) under section 164 Cr.PC will prove the guilt of the accused. There is prima facie materials to show his involvement in the offences alleged under section 28, 39 and 40 of Unlawful Activities (Prevention) Act and the bar under section 43D of the Unlawful Activities (Prevention) Act in granting bail shall come into play. Also under section 43D(7) of the UA(P) Act, there is a bar as no bail shall be granted to an accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorised or illegally except in very exceptional circumstances and for reasons to be recorded in writing. There has been earlier orders in CrI.MP No. 184/2021, where this court has taken a clear stand. There is every chance that the accused will abscond and he has a capacity to tamper with the evidence of this case. He shall also influence the

witness using his high hands. As per section 37 of NDPS Act, the accused shall not be released on bail unless the conditions therein are satisfied.

6) The matter has been heard.

7) As apart from the specific findings recorded in CrI.MP No. 184/2021, it is pressed for in the petition that the final report has been filed and that is a changed circumstance. Of course there had been a finding that more time had to be given to the prosecution to complete the investigation. However, earlier there has been a finding that it shall suffice to state that with the available materials on record, there is reasonable ground to think that the allegations against the petitioner are prima facie true.

8) There is an argument placed in the bail application that the evidence established in the charge sheet against the accused number 8 does not go to make a arguable case. Among the evidence that has been tendered in the chargesheet, there are the statements of CW-77, CW-75 and CW-76 cited to prove the association of A-8 Ramesh with A-6 Suresh Raj, A-9 Satkunam, Sounderajan (A-8 in RC 01/2021), Ahamed Fasly (A-14 in RC 01/2021) and others, the drugs and other illegal dealing of A-8 Ramesh and their secret meetings. The statement of CW-83 will also show the same. CW-88 is cited to prove the gathering of A-6 Suresh Raj, A-8 Ramesh, A-9 Satkunam and

Sounderajan and others in his hotel Lee Crystal at Chennai in August 2020. The statement of Shri CW-49 shows the stay of A-8 Ramesh in a rented house at Athani, Ernakulam from where the incriminating documents and digital devices were seized.

9) Added to that, the statement of Soundarajan recorded u/s 164 of CrPC shows the association of A-8 Ramesh with Other activist persons and about the conspiracy meetings of A-8 Ramesh with co-accused.

10) The statement of Soundarajan (A-8 in RC 01/2021) would show the affiliation of A-8 Ramesh with cadres of the proscribed organisation including A-9 Satkunam, and also point out the conspiracy hatched with A9 Satkunam and others. There is a statement with respect to the fund raised by A-8 Ramesh which was provided to A9 Satkunam and others for furthering the activities of the proscribed organisation.

11) The statement of Ahamed Fasly A-14 shows the fund received from Sri Lanka which was raised from illegal drugs dealings etc. The statements of A-8 Soundarajan and A-14 Ahamed Fasly u/s 164 of CrPC are cited to corroborate the statements of witnesses mentioned above and the documents seized during investigation. Apart from that there are other records and statements, and much material including digital devices. The statement of

protected witness-A proves the association of Suresh Raj, Sounderajan, Ramesh, Fasley, Satkunam and others, and also their LTTE relation, their drug dealings and also about their conspiracy meetings etc. The statement of Protected Witness-C proves the affiliation of Suresh Raj, Sounderajan and Ramesh with LTTE, and also their LTTE relation, their drug dealings and also about their conspiracy meetings.

12) The contents of the digital records are so voluminous that a meticulous reproduction of the same shall occupy unnecessary space. It shall suffice to state that the case of the prosecution is not a mere statement that the petitioner has involvement in the above case. Going by the level of evidence that has been tendered in this case against this particular accused, it has to be found that perusal of the case diary / report under section 173 of the Code along with records / material objects / digital evidence produced in this case would entail an opinion in the mind of the court that there are reasonable grounds for believing that the accusation against such person is prima facie true.

13) In the earlier bail applications this Court has already taken a view that with the facts of the case, a bar under section 43 D of the Unlawful Activities Prevention Act shall apply. As I have discussed already, the final report has sufficient materials to come to a conclusion that there are reasonable grounds to believe that the accusation is prima facie true. This position has been explained

By the Honble of high court of Kerala in Younus Aliyar vs. Sub Inspector of Police (MANU/KE/2496/2014) wherein specific parameters for considering afresh an application for bail once dismissed - within the parameters of sub section 5 of section 43D UA(P) Act - have been given as follows :

“(i) When the N.I.A. Court or the appellate court dealing with an appeal under S. 21 of the N.I.A. Act comes to an opinion that there are reasonable grounds for believing that the accusation against the accused person is prima facie true on the basis of the perusal of the case diary or the report made under S. 173 of the Code, the same is not liable to be overlooked while dealing with a subsequent bail application or an appeal, unless there are further materials or circumstances during the course of investigation as is discernible from the case diary of a case where investigation is going on and where the entire materials, which may include availability of materials in that portion of the case diary that was looked into in the bail application already decided. Therefore, when a subsequent bail application is filed, during the course of investigation, the entire case diary can be looked into afresh to consider the materials and circumstances in the case diary as presented for consideration at the hearing of the

subsequent bail application, including any material therein which was left unconsidered in the earlier round. We answer the reference as aforesaid.

(ii) In cases where a final report has been placed in terms of S. 173 of the Code and when a bail application or an appeal has been considered on the basis of such report to hold that there is a prima facie case to exclude grant of bail in terms of the proviso to sub-s. (5) of S. 43D of the U.A.P. Act, a subsequent consideration would stand excluded. However, in cases where further investigation is permitted in terms of sub-s(8) of S. 173 of the Code and a further report comes and is treated as the final report, for the purpose of sub-s. (2) of S. 173, that could also be the subject of a fresh scrutiny for grant of bail. In cases of further investigation in terms of sub-s. (8) of S. 173, the course of such investigation may also generate bail applications on materials that come, including materials in case diary during such investigation.”

14) It can be seen in the given case that the materials on record which came up with filing of the final report do not support a view that

the accusation is is not supported by reasonable grounds.

15) Also, it follows that changed circumstances should exist for consideration of this bail application. The argument that the general rule that the jail is an exception and bail is the rule may not apply in cases of special enactments. Placing reliance on State of Madhya Pradesh vs. Kajad (AIR 2001 SC 3317), mere passage of time in custody cannot be taken as a ground for inferring a change in circumstances. Filing of the charge sheet should not be taken as a changed circumstance rather should be taken as a fortifying ground for the bar under section 43D(5) of the UAP Act .

16) There has been an argument that under section 43D(7) of the unlawful activities Prevention Act, there is a clear bar for granting bail to a person who is not an Indian citizen and has entered the Indian territory in an unauthorised manner. This section does not seem to be applicable to the facts of the case, the case against present accused had been that of overstay, And not getting entry in an unauthorised manner.

17) For these reasons, there is bar under section 43D of the Unlawful Activities (Prevention) Act in granting bail to this accused person.

Consequently, this petition also deserves a dismissal.

In the result, 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 day of 25th May, 2022.

Sd/-
Kamanees.K.
Judge

Appendix : NIL

Id/-
Judge

// True copy //

(By Order)

Sheristadar

Typed by: jcs
Comp.by: skp

Crl.M.P No. 66/2022
in
SC 4/2021/NIA
(RC No. 01/2021/NIA/KOC)
Order Dated 25/05/2022