

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

Friday, the 28<sup>th</sup> day of October 2022 / 6th Karthika, 1944

BAIL APPL. NO. 7981 OF 2022

CRIME NO.529/2022 OF Pallithottam Police Station, Kollam

PETITIONERS/ACCUSED 3 & 4:

1. DILAKSHAN,AGED 29 YEARS S/O RANASINGAM,10/3, AVVYOR STREET, TRINCOMALE, SRI LANKA, PIN - 310000
2. KONCELA,AGED 27 YEARS, W/O DILAKASHAN,10/3, AVVYOR STREET,TRINCOMALE, SRI LANKA, PIN - 310000

RESPONDENTS/STATE/COMPLAINANT:

1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031
2. SUB INSPECTOR OF POLICE/SHO PALLITHOTTAM POLICE STATION, KOLLAM DISTRICT, PIN - 691006
3. ADDL.R3.DEPUTY SOLICITOR GENERAL OF INDIA, HIGH COURT OF KERALA, ERNAKULAM-68203(1S IMPEADED AS ADDL R3 AS PER ORDER DATED 25/10/2022 IN CRL.M.A.NO.1/2022 IN BA.NO.7981/2022)
4. ADDL.R4.DIRECTOR, DIRECTORATE OF WOMEN AND CHILD DEVELOPMENT, THIRUVANANTHAPURAM-695012. (IS IMPEADED AS ADDL.R4 AS PER ORDER DATED 25/10/2022 IN CRL.M.A.NO.3/2022 IN BA.NO.7981/2022)
5. ADDL.R5.DIRECTOR, DIRECTORATE OF HEALTH SERVICE, GENERAL HOSPITAL JUNCTION, THIRUVANANTHAPURAM-695035 (IS IMPEADED AS ADDL.R5 AS PER ORDER DATED 25/10/2022 IN CRL.M.A.NO.3/2022 IN BA.NO.7981/2022)
6. ADDL.R6.KERALA LEGAL SERVICE AUTHORITY, MEMBER SECRETARY, SAHAYA BHAVAN, KOCHI-31 (IS SUO MOTU IMPEADED AS ADDL R5 AS PER ORDER DATE 26/12/2022 IN BA.NO.7981/2022)
7. ADDL.R7.FOREIGNERS REGIONAL REGISTRATION OFFICER, FOREIGNERS REGIONAL REGISTRATION OFFICE, THIRUVANANTHAPURAM, T.C.14/1377, VAZHUTHACAUD, OPPOSITE GANAPATI TEMPLE, THYCAUD P.O, THIRUVANANTHAPURAM014, (IS SUO MOTU IMPEADED AS ADDL.R7 AS PER ORDER DATED 26/10/2022 IN BA.NO.7981/2022)

This Bail application again coming on for orders upon perusing the petition and this court's order dated 26.10.2022 in B.A NO. 7981/2022 and upon hearing the arguments of M/S V.I.RAHUL & SHERIN EDISON, Advocates for the petitioners, PUBLIC PROSECUTOR for R1 & R2, and SRI.MANU S.R3 & R7, DSG OF INDIA, the court passed the following:

**VIJU ABRAHAM, J.**

.....  
**B.A.Nos.7913, 7981, 8006,  
8059, 8203, 8239 and 8606, of 2022**  
.....

Dated this the 28<sup>th</sup> day of October, 2022

**ORDER**

Petitioners in B.A.Nos.8606, 7981, 8006 and 8239 of 2022 are accused in Crime No. 529 of 2022 of Pallithottam Police station, Kollam District registered alleging commission of offences punishable under Sections 511 and 370 read with Section 34 of the Indian Penal Code, Sections 14A and 14C of the Foreigners Act, 1946, Section 10 of the Emigration Act and Section 12(1)(a) of the Passport Act.

2. The prosecution allegation in Crime No.529 of 2022 is that the petitioners in furtherance of their common intention along with other accused and children, were found near Vaddy Harbour, Kaikulangara Cheny Kollam West Village Kollam, without proper travel documents and permissions while making preparations for illegally immigrating to Canada via Sea. It is alleged that the petitioners along with other accused had intentions and preparations for human trafficking.

3. All the petitioners in these bail applications were arrested on 06.09.2022 and they are in custody since then.

4. The petitioners in B.A.Nos.7913, 8059 and 8203 of 2022

are accused in Crime No.868 of 2022 of East Police Station, Kollam District, registered alleging commission of offences punishable under Sections 511 and 370 read with Section 34 of the Indian Penal Code and Sections 14A, 14a(b), 14B and 14C of the Foreigners Act, 1946.

5. Prosecution allegation in Crime No.868 of 2022 is that the petitioners allegedly sneaked from refugee camps in Tamil Nadu, who were aware that foreign citizens are not permitted to travel within India without proper and valid travel documents, were found within various regions in Tamil Nadu and India without possessing sufficient documents and that they were lured by 17<sup>th</sup> accused along with accused Nos.1 and 2 promising jobs in Canada after collecting money from the petitioners, reached Kollam with a plan to sail to Canada in a boat and stayed at Kollam in a hotel and that to commit human trafficking, the accused were supposed to leave foreign countries in a fishing boat from Kollam.

6. All the petitioners in these bail applications were arrested on 06.09.2022 and they are in custody since then.

7. Petitioners in these bail applications submit that they are falsely implicated in the abovesaid crimes and that the investigation is practically over and their further detention is not required for the

purpose of the investigation.

8. Learned Public Prosecutor upon instructions submitted that the investigation is going on and the allegation against the petitioners are of a serious nature. The learned Deputy Solicitor General of India, appearing for the Union of India and FRRO, Thiruvananthapuram submitted that since these petitioners are all foreign nationals they cannot be allowed to move around freely in the country after their release until and unless necessary decision is taken in this regard by the Civil Authorities. The said view was reiterated by the learned Public Prosecutor also. On a specific query made by this Court to the learned Public Prosecutor as to whether there are any detention centers established by the State Government, so that the petitioners could stay if they are released on bail, he submitted that the issue regarding establishment of detention centres in the State is under consideration of this Court in W.P(Crl). No.96 of 2022 and that it was submitted by the Government in the said case that a building has been identified at Kottiyam in Kollam District to start a transit home. Thereafter, this Court in the said Writ Petition has issued an order dated 20.10.2022 that a temporary detention center should be set up within a period of one month from the date of the order, failing which the Secretaries of

the concerned department shall appear before the Court in person and the case is now being posted to 23.11.2022 for further consideration. Learned Public Prosectuor upon instruction submitted that temporary detention center will be established and notified without any delay and thereafter the petitioners could be permitted to continue there in the event of their release on bail. It is further seen that many of the petitioners are persons who were living in various refugee camps situated in State of Tamil Nadu and petitioners as well as the respondents submitted that they could be sent back to such refugee camps in Tamil Nadu where strict surveillancce is provided by the Government of Tamil Nadu. This Court has impleaded the Director of Rehabilitation and Welfare of Non Resident Tamils, Chepauk, Tamil Nadu as additional respondent and notice has been issued to the said respondent by speed post/e-mail and the question of sending back the petitioners to refugee camps established by the Government of Tamil Nadu could be decided only after obtaining the views of the said respondent.

9. In view of the above, this Court is of the opinion that these bail applications should not be finally disposed of, so as to obtain the views and instructions from the Government of Kerala, the Central

Government and that of the Government of Tamil Nadu. Since the petitioners are in custody from 09.06.2022 and some of them are women, and a few of their children are now under the protection of the Child Welfare Committee and now staying at care home and further that child of one of the petitioners is having serious health issues, this Court is of the opinion that petitioners cannot be further detained till instructions are obtained from the respective Government departments regarding the detention centres. Therefore, considering all these aspects and also taking into consideration the fact that petitioners are in custody from 06.09.2022 onwards, I am inclined to grant interim bail to all the petitioners in these bail applications.

10. Since all these petitioners are citizens of Srilanka, this Court is of the opinion that further directions are to be issued regarding their stay after their release on bail till specific instructions are received from the official respondents, who have already been impleaded in these bail applications. The petitioners in B.A. No.7981 of 2022 are husband and wife and they submit that they have come to India along with their two children for the treatment of their 4 year old boy who is suffering from “Kernicterus” a serious brain damage and the child requires constant treatment. It is submitted that the child is presently

with his mother at Attakulangara Women's Correctional Home. It is further submitted that petitioners 1 and 2 in B.A. No.8606 of 2022 are husband and wife and the 2<sup>nd</sup> petitioner is 5 months pregnant and is detained in Attakulangara Women's Prison and Correctional Home and her continued detention in prison is affecting her as well as her baby's health. The petitioners in B.A. No.8006 of 2022 are husband and wife and they were arrested along with their two children and the children are now under the custody of Child Welfare Committee, Kollam District and the children are now separated from their parents as the petitioners are detained in judicial custody. The Kerala State Legal Service Authority (KELSA) was impleaded as a respondent in these cases. Adv. Parvathy Menon representing KeLSA and the Victims Right Centre under KELSA entered appearance and filed statements. Smt.Parvathy Menon submitted that the facts stated above were verified and are found to be genuine. The child who is ill, requires constant medical attention. She further submits that the petitioners in B.A. No.7981 of 2022 and their child, petitioners 1 and 2 in B.A. No. 8606 of 2022 and petitioners in B.A. No.8006 of 2022 and their two children (Master Thenu Jayapriyan and Miss Vojika) can be accommodated in the home run by Gandhi Bhavan International Trust at Pathanapuram, Kollam

District till the Government starts detention centres or some other rehabilitation centres for such foreign citizens. Therefore, it is ordered that the petitioners in B.A. No.7981 of 2022 and their child, petitioners 1 and 2 in B.A. No. 8606 of 2022 and petitioners in B.A. No.8006 of 2022 and their two children (Master Thenu Jayapriyan and Miss Vojika) shall stay at the home run by Gandhi Bhavan International Trust at Pathanapuram, Kollam District until further orders are issued by this Court. It is further ordered that they shall not leave the premises of the home run by Gandhi Bhavan International Trust at Pathanapuram, Kollam District without obtaining necessary permission from the investigating officer in Crime No. 529 of 2022 of Pallithottam Police station, Kollam District. The investigating officer shall deploy necessary personnels for the surveillance of the petitioners who are permitted to stay at the home run by Gandhi Bhavan International Trust at Pathanapuram, Kollam District. The authorities under FRRO, Thiruvanthapuram shall also be at liberty to visit the home, where they are staying and shall also take necessary steps required under laws with regard to foreign citizens, in respect of all the petitioners in these bail applications. The Director of Health Services is impleaded as Additional Respondent in these bail applications. The said respondent



as well as the District Medical Officer, Kollam shall see that necessary medical facility is provided to the child who is suffering from 'Kernicterus' and also to the pregnant woman, including providing necessary ambulance service, whenever required. Adv. Paravthy Menon submitted that necessary facilities for their stay and basic medical facilities will be provided by the Gandhi Bhavan International Trust and if any specialized treatment is required it should be provided by the District Medical Officer, Kollam. It is made clear that if any requirement arises for taking the children or any of the petitioners out of the home where they are allowed to stay as per this order, the authorities of Gandhi Bhavan International Trust or the authorities under the KELSA shall do so only after getting necessary permission of the investigating officer in Crime No. 529 of 2022 of Pallithottam Police station, Kollam District and the investigating officer shall grant permission without any delay if such request is made and they shall be allowed to move out of the Home under police protection.

11. As regards the other petitioners, ie., 3<sup>rd</sup> petitioner in B.A.No. 8606 of 2022 and petitioners in B.A.No.7913 of 2022, B.A.No.8203 of 2022, B.A.No. 8059 of 2022 and B.A.No.8239 of 2022, their further stay after their release will be decided only after getting

instructions from the official respondents. Learned Public Prosecutor upon instructions submitted that these petitioners could be allowed to stay in Open Prison and Correctional Center, Nettukaltheri, Thiruvananthapuram till the bail applications are disposed of, for which the learned counsel for the respective petitioners also agreed to. Therefore, the 3<sup>rd</sup> petitioner in B.A.No. 8606 of 2022 and petitioners in B.A.No.7913 of 2022, B.A.No.8203 of 2022, B.A.No. 8059 of 2022 and B.A.No.8239 of 2022, shall be allowed to stay in Open Prison and Correctional Home, Nettukaltheri, Thiruvananthapuram, till further orders are issued by this Court and the investigating officer shall take steps to take them to Open Prison and Correctional Center, Thiruvananthapuram, after their release on bail. It is made clear that petitioners are not staying in the said open jail as prisoners but only as a temporary arrangement till further orders are issued in this regard. The Superintendent of Open Prison and Correctional Center, Thiruvananthapuram, shall see that all basic amenities including food and medical facilities are provided to the petitioners without fail. It is further submitted by the learned counsel for the petitioners that since they are from a foreign country, they are finding it difficult to find solvent sureties and therefore they shall be released on personal bond. I find

considerable force in the said request and also taken into consideration the fact that even after the release of the petitioners, they are kept under police surveillance, I feel that their prayer for release on executing personal bond can be allowed.

Therefore interim bail is granted to the petitioners on the following conditions:

(i) Petitioners shall be released on bail executing a personal bond of Rs.25,000/- (Rupees twentyfive thousand only) (solvent or not) before the jurisdictional court.

(ii) Petitioners shall co-operate with the investigation.

(iii) Petitioners shall not attempt to interfere with the investigation or to influence any witnesses in Crime No.529 of 2022 of Pallithottam Police Station, Kollam District and Crime No.868 of 2022 of East Police Station, Kollam District.

(iv) Petitioners shall not involve in any other crime while on bail.

(v) Petitioners in B.A.No.7981 of 2022, petitioners 1 and 2 in B.A.No. 8606 of 2022 and petitioners in B.A.No.8006 of 2022 shall furnish necessary undertaking/affidavit before the jurisdictional court to the effect that they shall continue to stay at the home run by Gandhi

Bhavan International Trust, Pathanapuram and it is further ordered that they shall not move out of the said home without obtaining prior permission of the investigating officer in the Crime No.529 of 2022 of Pallithottam Police Station, Kollam District.

(vi) The 3<sup>rd</sup> petitioner in B.A.No.8606 of 2022 and petitioners in B.A.No.7913 of 2022, B.A.No.8203 of 2022, B.A.No. 8059 of 2022 and B.A.No.8239 of 2022 shall stay after their release on bail in Open Prison and Correctional Home, Nettukaltheri, Thiruvananthapuram, until further orders.

If any of the conditions are violated the investigating officer in the abovesaid crimes ( Crime No.529 of 2022 of Pallithottam Police Station, Kollam and Crime No.868 of 2022 of East Police Station, Kollam) shall be at liberty to move the jurisdictional court for cancellation of bail.

The jurisdictional Magistrate shall issue necessary directions to the authorities concerned to implement the directions contained in this order.

The investigating officer in Crime No.529 of 2022 of Pallithottam Police Station, Kollam and Crime No.868 of 2022 of East Police Station, Kollam shall take sincere endeavour to complete the

investigation and file respective final reports at the earliest.

The jurisdictional court shall soon after receipt of the final report in the above numbered crimes, shall take sincere steps to complete the trial of the cases at the earliest, at any rate within a period of three months from the date of filing of the final reports.

The official respondents are directed to submit concrete and specific instructions especially regarding their continued stay, before the next posting date. Post the case for further consideration on 03.11.2022.



Sd/-

**VIJU ABRAHAM  
JUDGE**