

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 11TH DAY OF AUGUST 2022 / 20TH SRAVANA, 1944

CRL.A NO. 623 OF 2022

AGAINST THE ORDER in Cr1.M.P No.66/2022 in SC No.4/2021 OF SPECIAL

COURT FOR TRIAL OF NIA CASES,ERNAKULAM DATED 25.05.2022

APPELLANT/PETITIONER/ACCUSED NO.8 (FORMERLY ACCUSED NO.10 IN R.C:

RAMESH

AGED 37 YEARS

S/O.ARASARATHINAM, RESIDENT OF MADAMPITIYA, MODARA,
COLOMBO-15 PRESENTLY RESIDING ON A RENTED ACCOMMODATION
AT HOUSE NO.312/A, (AVRA-14) THEKKANATH HOUSE, ATHANI
P.O., ALUVA, ERNAKULAM DISTRICT, PIN - 683102

BY ADVS.

P.M.ZIRAJ

IRFAN ZIRAJ

RESPONDENTS:

1 THE CHIEF INVESTIGATION OFFICER
NATIONAL INVESTIGATION AGENCY, KOCHI, PIN - 682020

2 UNION OF INDIA
REPRESENTED BY NATIONAL INVESTIGATION AGENCY, KOCHI,
REPRESENTED BY PROSECUTOR, NATIONAL INVESTIGATION
AGENCY, PIN - 682020

BY ADVS.

MANU S. ASG OF INDIA

SINDHU RAVISHANKAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.08.2022,
THE COURT ON 11.08.2022 DELIVERED THE FOLLOWING:

K. VINOD CHANDRAN & C.JAYACHANDRAN, JJ.

Crl.Appeal No.623 of 2022

Dated this the 11th August, 2022

JUDGMENT

Vinod Chandran, J.

The appellant is aggrieved by the rejection of an application for bail by the Special Court for Trial of NIA Cases, Kerala, Ernakulam. The appellant is accused No.10 in Crime No.498/2001 of Vizhinjam Police Station renumbered as RC No.01/2021/NIA/KOC. The case arose on a Sri Lankan fishing boat by name 'Ravihansi' being intercepted, by the Indian Coast Guard, in which was found huge quantity of narcotic drugs (300.23 kg. Of Heroin) along with five AK 47 rifles and 1000 numbers of 9mm ammunition. There were no proper documents and six Sri Lankan nationals found on board were arrested by the Narcotics Control Bureau (NCB), Sub Zone, Kochi on their arrival at Vizhinjam Port at Thiruvananthapuram, Kerala. The accused and the seized articles were produced before the JFCM, Neyyattinkara

by the NCB and later the case was transferred to Sessions Court, Vanchiyoor. Offences were alleged under the Unlawful Activities (Prevention) Act, 1967 and the Arms Act read with S.34 IPC. The Government of India directed the NIA to take over the investigation and later A7 and A8 were taken into custody, being members of the banned terrorist organization 'Liberation Tigers of Tamil Eelam' (LTTE). The appellant, the brother of the 7th accused,, was also arrested and it was revealed that he had stayed in India without a Visa violating the provisions of Foreigners Act. He was released on bail in the crime registered at the Nedumbasseri Police Station, when he was taken into custody by NIA on 7.9.2021. According to the NIA the investigation conducted in the other case revealed the complicity of the appellant herein also, who had actively connived in procuring prohibited arms and ammunition, besides contraband articles and furthering the activities of the proscribed terrorist organization LTTE, within India and abroad.

2. It was contended before the trial Court and before us by the learned Counsel for the appellant, Sri. Irfan Ziraj, that the appellant is arrested only because he is the brother of A7. Appellant is carrying on wholesale business of textiles and the transactions in his account are all relating to that. The appellant has enough materials to show the source of the amounts received and but for a mere statement of his involvement in the above case, there is absolutely no evidence to connect him with the proscribed organization or even such activities alleged against his brother. It is also submitted that the wife of the appellant recently gave birth and he has other children who cannot be looked after by his aged and ailing parents. The income from the business having ceased there is no means of livelihood for his family. The NIA has submitted the final report and there is no reason why he should be kept inside bars. There is absolutely nothing in the final report connecting the appellant with the crimes alleged and in any event S.43D(7) has

no application since the allegation against him is only that he has overstayed in India. S.43D(7) clearly speaks of a person who is not an Indian citizen entering the country unauthorisedly or illegally, which does not apply to the appellant.

3. Sri.S. Manu, the learned ASG, stoutly opposes the appeal. It is pointed out that the NIA Court has considered the issue and based on the statements of witnesses as also that of the approver, has rejected the bail application. There are clear statements of the complicity of the appellant by the witnesses arrayed. The final report, with the connected documents are placed before us for perusal. It is pointed out that the proviso to sub section (5) of S.43D mandate that the Courts shall not release on bail, an accused, if on a perusal of a report made under s.173, there are reasonable grounds for believing that the accusation is *prima facie* true. On sub section (7) of S.43D it is pointed out that the overstayal of the appellant extends to five years and considering the

evidence of his having frequently traveled abroad there could have been an unauthorized entry into India.

4. We have perused the final report and the connected documents. The NIA Court has specifically relied on the statements of CWS75 to 77 and the original A8 Soundarajan who turned approver. The approver specifically refers to his connection with people who were active workers of LTTE and himself turning a sympathizer. Unable to meet both ends meet and continue his education, it was a former member of the intelligence wing of the LTTE, Sri. Sabeasan @Satkunan (A15), who employed him in one Gopika Enterprises owned by the said person. The approver employed as an Office Assistant realized that the firm is carrying on money transfer business and there were huge hawala transactions carried on. Money from Sri Lankan nationals were accepted in Indian currency and remittance made in Sri Lanka. The approver was engaged in distributing money and making cash deposits in deposit machines and accounts as per the instruction of Sabeasan. He often

was a participant in secret meetings arranged by Sabeasan where Suresh (A7) and Ramesh (appellant) used to attend and verify the account books kept by Sabeasan. From the meetings he understood that the three persons were planning to raise funds by dealing in arms and drugs. The appellant herein was referred to as one of the drug dealers who took responsibility of certain consignments and transportation of arms and ammunition.

5. CW76 was a close acquaintance of the appellant who used to frequently stay in the house of the appellant and was closely associated with Suresh, the appellants elder brother. CW76 spoke of the drug and hawala business carried on by the brothers and specifically referred to the appellant having collected hawala money from a person named Faseel Bhai. He also spoke of the brothers being active supporters of LTTE and having frequently met with the approver and Sabeasan to discuss about furthering the activities of the LTTE. CW76 was the staff of the brother of the

appellant who accompanied the brothers to the various meetings and often collected hawala money from Fazeel Bhai on the instruction of the brother. The statement also reveals specific instances where money was received on the instruction of the brothers, in parties arranged and meetings convened both in India and abroad. There is also reference to one Sri Lankan national, Younus who was doing illegal business with the brothers.

6. CW76 spoke of a specific instance on 10.03.2021 when himself, the appellant and his family, Younus and his family and one John Paul and his wife travelled to Bangalore and stayed there and proceeded to Goa where the rooms were booked in the name of CW76. During this time Younus was constantly on the telephone and both Younus and the appellant were tensed and irritated. After one week at Goa, they came to Bangalore and after a brief halt, traveled to Kozhikode and then to Kochi. In Kochi they stayed in a hotel for three or four days and on 19th the appellant asked him

to find a home-stay especially since, according to the appellant, he could not return to Tamil Nadu immediately. They stayed at a home-stay in Alwaye for about ten days and then shifted to a hotel and later a house was arranged on rent at Athani. The appellant with his family then shifted to the rented house, taken on rent by CW76. Later, on coming to know of the interception of Sri Lankan fishing boat 'Ravihansi' CW76 realized that Younus and appellant were following the movement of the consignment. The statement made by CW76 is fully supported by John Paul, CW83, who also accompanied, CW76, Younus, Ramesh and family to Bangalore, Goa and then to Kochi via Mangalore and Kozhikode. The statements of the witnesses show not only the inextricable connection of the appellant with the illegal activities but also show the definite link with the proscribed organization, LTTE, with full knowledge and complicity in the attempt to smuggle heroin, arms and ammunition in the boat, intercepted before its entry into the port.

7. The final report specifically accuse the appellant and the other accused, including his brother being core cadre of the LTTE, having conducted secret meetings and conspired to carry out illegal activities of trafficking in drugs as also arms and ammunition with the intention of raising funds to revive and further the activities of the LTTE, both in India and Sri Lanka, formed themselves into a terrorist gang, transferred money through hawala channel for the procurement of drugs, arms and ammunition and arranged *inter alia*, the consignment attempted to be brought into India, which was intercepted within the territorial waters of India. There is *prima facie* truth in the accusation against the appellant and S.43D(5) applies squarely with all the rigour of the proviso.

8. We also take note of the fact that the appellant has been overstaying for more than five years within India. The statements of the witnesses also indicate frequent travel outside India. In that

circumstances it is only possible that the appellant had been using forged documents to come into the Country and it is quite possible that he has, in the ensuing years often entered into the Country unauthorizedly and illegally.

We find no reason to upset the findings of the learned trial Judge or grant bail to the appellant/accused. We reject the appeal filed by the appellant.

Sd/-

K. VINOD CHANDRAN, Judge

Sd/-

C. JAYACHANDRAN, Judge

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