

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE VIJU ABRAHAM

TUESDAY, THE 27TH DAY OF SEPTEMBER 2022 / 5TH ASWINA, 1944

BAIL APPL. NO. 342 OF 2022

OCCURRENCE REPORT NO.1 OF 2021 OF NCB SUB ZONE, COCHIN

PETITIONER/ACCUSED:

- 1 T. SUNIL KURERA, AGED 68 YEARS
NO. 233, MAHAVEWA ROAD, THODUWAWA,
SRILANKA - 61224
- 2 W. RANIL JAYANTH FERNANDO @ RAJA, AGED 47 YEARS
NO. 86/B, KUDAMUWELLA, THODUWAWA,
SRILANKA - 61224
- 3 CHAMIKA GAMAGE DESHAPPIYA @
K.M. THARAKA NISHANTH RUPASINGE
AGED 30 YEARS, NO. 4, MAILAGASYA,
MAILPITITYA, KANDY, SRI LANKA - 20702
- 4 MADUSHA DILSHAN JAYATHISSA
AGED 21 YEARS
NO. 100A, BATANIRA, IRANWILA, HALAWATHA,
PUTHALAM DISTRICT, SRI LANKA - 61300
- 5 W. NIPUN SADARUWAN, AGED 21 YEARS
NO. 111, HALAWATHA, ERANWEELA, 03, PATUMAGA,
PUTHALAM DISTRICT, SRI LANKA - 61300
- 6 W.M. NILANTHA ARUNAKUMAR, AGED 28 YEARS
NO. 51A, KARMEL MAWATHA BATAHIRA, ERANWEELA,
PUTHALAM DISTRICT, SRI LANKA - 61300

BY ADVS.
GODWIN JOSEPH
SANKARA MANIKANDAN R.
NAVEEN.R

RESPONDENT:

- 1 UNION OF INDIA, REPRESENTED BY THE CENTRAL
GOVERNMENT STANDING COUNSEL, HIGH COURT OF KERALA,
ERNAKULAM - 682031
- 2 THE INTELLIGENCE OFFICER, NARCOTIC CONTROL BUREAU,

SUB ZONE, COCHIN, A1 BLOCK, 2ND FLOOR, KENDRIYA
BHAVAN, KAKKANAD, COCHIN - 682042, REPRESENTED
BY THE CENTRAL GOVERNMENT STANDING COUNSEL,
HIGH COURT OF KERALA, ERNAKULAM - 682031.

ADDL.R3 COAST GUARD,
REPRESENTED BY COMMANDING OFFICER, COAST GUARD
DISTRICT HEADQUARTERS NO.4, KALVATHY ROAD,
FORT KOCHI-682001
IS SUO MOTU IMPEADED AS ADDL R3 AS PER ORDER DATED
14/3/2022 IN BA.342/2022.

BY ADVS.
ASG OF INDIA
SRI.RAJAGOPALAN NAIR.K.R., CGC

OTHER PRESENT:

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SRI. SUVIN R.MENON, CGC FOR R3

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
27.09.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

VIJU ABRAHAM, J.

.....
B.A.No.342 of 2022
.....

Dated this the 27th day of September, 2022

ORDER

This is an application for regular bail.

2. The Petitioners herein are accused Nos.1 to 6 in Occurrence Report No.1 of 2021 of NCB Sub Zone, Cochin, for offences alleged to have been committed under Sections 3/10, 15(a) and 15(c) of Maritime Zones of India Act, 1981, and 8(c) read with Sections 20(b)(ii)(c), 22(c), 23(c), 24, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, "NDPS Act").

3. The prosecution case is that on 07.03.2021, the Indian Coast Guard ship ICGS Varaha had intercepted a fishing boat named Akarsha Duwa having six Sri Lankan nationals, the Petitioners herein, on board in midsea of Indian waters, for allegedly suspected to be carrying narcotic drugs. It is further alleged that the Indian Coast Guard had handed over the Petitioners along with a Letter regarding the interception and the inventory to Narcotic Control Bureau (NCB), Cochin Sub Zone at Vizhinjam on 08.03.2021.

4. It is submitted that the petitioners were formally arrested on 08.03.2021 and they have been languishing in judicial custody ever since then. It is submitted that the petitioners herein are fisher folks of Sri

Lankan nationality. They, on the fishing vessel named Akarsha Duwa, were enroute on their regular fishing activity along with two other boats namely Chauthurani-3 and Chauthurani-8 while being suddenly intercepted by the Indian Coast Guard. It is pertinent to note that no contraband material was found on the person of the petitioners or on board of the aforesaid fishing vessel. But the petitioners were apprehended/arrested solely for the reason that they were not able to properly answer the queries put forth to them by the officials of the Indian Coast Guard. The same was due to the fact that the petitioners were versed only in the Sinhala language and the Coast Guard ship was not having any Sinhala translator with them at the time of alleged interception. Thus, the petitioners were arrested and handed over to the officials of NCB Cochin Sub Zone at Vizhinjam.

5. It is submitted that the main case of the prosecution is that the petitioners have admitted to the Intelligence Officer that they have carried/transported narcotic drugs in the aforesaid fishing vessel. However, other than the statement alleged to have been voluntarily made by the petitioners/accused before the Intelligence/Investigating Officer, there has not been any material evidence to indict the petitioners herein. In the aforesaid circumstances, it is crystal clear that this case comes within the scope of Section 37(b)(ii) of the NDPS Act for granting bail to the petitioners herein. It is also pertinent to note that the Investigation in the aforesaid case is over and Final Report/Complaint

Report has been filed by the Investigating Officer on 31.08.2021. In this situation, the continued incarceration of the Petitioners are not at all necessary. However, the petitioners have been languishing in custody even after lapse of more than four and a half months even after the filing of Final/Complaint Report. It is submitted that the petitioners herein are not having any criminal antecedents and are harassed only for the reason that they are simple fisherfolk and are foreign nationals.

6. Even though the petitioners moved the Sessions Court twice seeking bail, the same was rejected by Annexure-3 and 4 orders.

7. The Special Public Prosecutor for the NCB seriously opposed the application for bail. The information of seizure of boat by Indian Coast Guard was received at around 06:30 hours. on 07.03.2021. Arrest of petitioners 1 to 6 was recorded on 09.03.2021 from 09:00 a.m. onwards at Indian Coast Guard Office, Vizhinjam. Then they were handed over as per handing over/taking over note dated 08.03.2021 and produced before the Magistrate concerned on the same day itself.

8. The 1st petitioner (A1) worked in Italy for 13 years from 2000 onwards and his 5 children are still staying in Italy . It is contended that all of the petitioners knew about their mission and are part of international drug cartel. Their entrusted assignment was to collect 100 Kgs. of Hashish and 150 Kgs. of Methamphetamine from the high sea in the international waters from GPS location N 8.00 E66.00. As assigned they reached the GPS location on 26.02.2021 and waited there for 2

days and on 28.02.2021 a foreign vessel came near to their boat and handed over the contraband of 100 Kgs. of Hashish and 150 Kgs. of Methamphetamine. After receiving the contraband, the 3rd accused with the help of other accused/petitioners repacked it into 5 parcels and tide it with salt bags and then tide it with Anchor and kept ready to drop in the sea if noticed by Navy or other Enforcement Agencies. After a journey of 3 days toward Sri Lanka the Captain of boat noticed in GPS satellite radar a Helicopter coming which was near about 50 Kms. and the 3rd petitioner conveyed the situation to his counter parts in abroad through Thuraya satellite phone and as directed by them they pushed all the 5 packets containing Narcotic Drugs and Thuraya Satellite phone with sim in the mid sea of Indian waters. Accused 9 and 10 offered 2 Crores Sri Lankan Rupees to the 1st petitioner for transporting the contraband. 1st petitioner offered 25 lakhs Rupees to the 2nd petitioner for undertaking the job. Both the 1st and 2nd petitioners offered big amount to the other petitioners on bringing the narcotics and paid Rs.25,000/- to each of them as advance. Throughout their journey to GPS location N 8.00 E66.00 the 3rd petitioner contacted to destinations in abroad through the satellite phone. The 3rd petitioner's original name is KM Tharaka Nishant Rupasinge and he was given a fake Identity Card to complete the operation of trafficking of drugs. He was given 5 lakhs Rupees advance on 13.02.2021 as directed by the 7th accused. The 3rd accused had a bank loan of 9 lakhs Sri Lankan Rupees from Bank of Ceylon, Kandy

with A/c. No. 70012734. Accused 7 to 10 offered him job and huge payment if he joins with them transporting contraband from mid sea. The 3rd petitioner was in contact with Pakistani supplier during sea voyage through his phone No. 00923082233343. He a contacted his sister and his girl friend in Sri Lanka from his Thuraya satellite phone. The 7th accused Vinod deposited Sri Lankan Rupees 50,000/- to his sister's Bank Account No. 7347 9371 maintained with Bank of Ceylon and promised to pay 3 lakhs after delivery of consignment. There are independent witnesses in the above case. The officials of Indian Coast Guard are witnesses in the above complaint. Their statement recorded is not hit by the judgment in **Tofan S Vs. State of Tamil Nadu, (2021) 4 SCC 1** as the officials are not accused and does not amount to confession of an accused. The statement of Coast Guard Officials forms part of the complaint. The Indian Coast Guard registered a crime on 08.03.2021 and handed over the same to the Investigating Agency, NCB, Kochi Zone. MIZ Patrol Register Extract of the petitioner's boat was produced as part of the complaint. Boarding Officer Diary Extract was also produced. Inspecting/distension memo and Navigation Data of the petitioners' boat was also produced as part of the Complaint. The Govt. of India, Ministry of Home Affairs had written official letter dated 14.06.2021 to the Director, Police Narcotics Bureau, Sri Lanka seeking information and details of all the accused and their criminal antecedents. The route map of petitioners' Ship is also produced in the complaint.

CAF and CDR details of Thuraya satellite phone of UAE origin used by the petitioners including sharing of terminals and other details was sought for from the Ministry of Interior, UAE vide letter dated 10.06.2021 of Ministry of Home Affairs. Details of phone call records made by the petitioners which was provided by the respective telephone service providers forms part of the complaint. The Thuraya charger and other MOS were send for forensic analysis. Acknowledgement from Centre for Development of Advanced Computing and its cyber security group is produced in the complaint. Since there is ample evidence and independent and official witnesses, other than the confession statement of the accused made under Section 67, to prove the prosecution case there is all chance that the petitioners will get conviction in the above complaint.

9. It is further submitted that a perusal of the route of the seized boat will prove that a fishing boat of Srilankan origin travelled through the International Sea till it reached and was intercepted near Minicoy Island and such routing to far off is suspicious. Petitioners are part of international drug cartel dealing in bulk quantities of contraband and drugs, and they are foreign citizens. The rigor of Section 37 will definitely come into play and they can be released only on satisfying the twin conditions in Section 37 of the NDPS Act. Further, as the petitioners are foreign nationals, if they are released on bail, their presence will not be available at the time of trial.

10. Learned counsel for the petitioners submitted that going by **Tofan Singh's** case supra, the statement under Section 67 of NDPS Act is not admissible and there is no other evidence to connect the petitioners to the alleged crime, to which the learned Special Public Prosecutor would submit that there is ample evidence, independent and official witnesses, other than the statement under section 67 to prove the case of the prosecution. Further contention of the petitioners that the petitioners were not produced before the jurisdictional Magistrate within 24 hours and the arrest, therefore, can be treated only as illegal, to which the learned Special Public Prosecutor submitted that the petitioners were handed over on the strength of handing over/taking over note dated 08.03.2021 and the petitioners were produced before the jurisdictional Magistrate on the very same day, and therefore the said contention is absolutely without any basis.

11. I find considerable force in the argument of the learned Special Public Prosecutor that petitioners being nationals of Sri Lanka there is every chance for them to abscond and their presence cannot be secured at the time of trial. The trial court has rejected the application on two occasions.

12. Considering the facts and circumstances of the case, though I am not inclined to grant bail to the petitioners at this stage in view of the rigor of Section 37 of the NDPS Act, taking note of the fact that petitioners are in custody from 09.03.2021 and that the final report is

already filed and further that petitioners are foreign nationals, I am inclined to dispose of the bail application by issuing a direction to the trial court to expedite the trial of the case Sessions Case in O.R. No.1/2021 of Narcotics Control Bureau, Sub zone Cochin and complete the same within an outer limit of three months from today.

Registry to communicate this order to the District and Sessions Court, Thiruvananthapuram for information and compliance.

Sd/-

**VIJU ABRAHAM
JUDGE**

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