

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

Bail Appl..No. 209 of 2015 ()

CRIME NO. 509/2014 OF VELLATHOOVAL POLICE STATION , IDUKKI DISTRICT

PETITIONER(S):

1. PRABHAKARAN,
S/O VENGADASWAMY, AGED 51 YEARS,
NAWALAPITIA, SRI LANKA.
2. SANTHY,
D/O SUBRAMANIAN, AGED 39 YEARS,
NAYAPANE, SRI LANKA.
3. PRASANTY, D/O PRABHAKARAN, AGED 18 YEARS,
NAWALAPITIA, SRI LANKA.

**BY SRI.K.RAMAKUMAR, SENIOR ADVOCATE
ADVS. SRI.S.M.PRASANTH
SRI.C.DINESH
SRI.G.RENJITH
SMT.ASHA BABU
SMT.AMMU CHARLES
SMT. JINNU SARA GEORGE**

RESPONDENT(S)/STATE & COMPLAINANT :

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM -682 031
2. THE SUB INSPECTOR OF POLICE,
VELLATHOOVAL POLICE STATION, IDUKKI -685 563

BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 19-01-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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B.KEMAL PASHA, J.

.....
B.A. No.209 of 2015

.....
Dated this the 19th day of January, 2015

ORDER

Petition filed under Section 439 Cr.P.C.

2. Petitioners are the accused in Crime No.509/2014 of Vellathooval Police Station registered for the offences punishable under Sections 3(2)(c) read with Section 14(a)(b)(c) of Foreigners Act 1946.

3. The petitioners, who are Srilankan citizens, came to India on 25.6.2008 on a visiting visa and illegally stayed in India, even after the expiry of the said visiting visa, without any further visa. The petitioners have been in custody for the period from 1.10.2014 onwards.

4. Heard learned Senior Counsel for the petitioners and the learned Public Prosecutor.

5. The learned Senior Counsel for the petitioners has pointed out that as directed by this Court, even though the final report has been filed, the same was not filed within the period prescribed under Section 167(2) of the Cr.P.C. It is argued, in such a context, they are entitled to statutory bail under Section 167(2) Cr.P.C., read with Article 21 of the Constitution of India.

6. According to the learned Senior Counsel for the petitioners, if at all Section 167(2) Cr.P.C. is not pressed into service, the constitutional mandate under Article 21 of the Constitution of India postulates that the petitioners should be enlarged on bail. There cannot be any discrimination between foreign citizen and Indian citizen in the matter. Considering the averments made by the learned Senior Counsel for the petitioners, I am of the view that the petitioners can be enlarged on bail on conditions to be incorporated within the meaning of the Foreigners Act, 1946 and Foreigners Order 1948.

7. In the result, this Bail Application is allowed and the petitioners shall be enlarged on bail on their executing a bond for ₹1,00,000/- (Rupees one lakh only) each with two solvent sureties each for the like sum each to the satisfaction of the concerned Judicial First Class Magistrate's Court and subject to the following terms and conditions:-

(i) The Political agent or Diplomatic agent of the country to which the petitioners belong, shall execute a bond to the satisfaction of the court below for an amount of ₹5,00,000/- (Rupees five lakhs only).

(ii) The petitioners shall remain in Idukki District till the disposal of the case against them and they shall be under the strict supervision of the Civil Authority within the meaning of Section 11 of the Foreigners Order 1948.

(iii) The Civil Authority shall specify their place of residence, restrict their movements and their association with any person or class of persons other than those specified by the Civil

Authority.

(iv) These petitioners shall report before the Investigating Officer in between 9 a.m. and 11 a.m. on all Mondays and Thursdays commencing from 26.01.2015 for a period of six months.

(v) The petitioners shall not tamper with the evidence or influence witnesses.

(vi) The petitioners shall make themselves available for interrogation as and when required by the Investigating Officer.

(vii) The petitioners shall not involve in any offence while on bail.

It is made clear that the violation of any of the conditions stipulated above will result in the cancellation of bail.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge