

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

CRL.A.No. 1333 of 2014

APPELLANT(S)/PETITIONER/ACCUSED 2:

ABDUL KALAM @ AZAD AGED 43 YEARS
S/O.AHAMMEDKUTTY, RAHETH MANZIL HOUSE, AKODE
NAZHAKKAD, MALAPPURAM DISTRICT.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.VIPIN NARAYAN
SRI.JAMSHEED HAFIZ

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

NATIONAL INVESTIGATION AGENCY,
ERNAKULAM, REPRESENTED BY ITS SPECIAL PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY SRI.M.AJAY, SPL.PUBLIC PROSECUTOR FOR NIA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08-06-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K.MOHANAN & RAJA VIJAYARAGHAVAN.V, JJ

Crl.Appeal. 1333 of 2014

Dated 8th June, 2015

JUDGMENT

Raja Vijayaraghavan.J.

1. The appellant is the 2nd accused in S.C.No.1 of 2014 on the file of the Special Court for trial of N.I.A Cases, Ernakulam. In this appeal filed under Section 21 (4) of the N.I.A Act, 2008 , he challenges the order dated 21.11.2014 passed in Crl.M.P. 287 of 2014, as per which the application for bail preferred by him was dismissed .

2. The gist of the prosecution case against the appellant and others, as is revealed from the final report, is that during 2009-2010, accused No.2 to 6 were parties to a criminal conspiracy to smuggle Fake Indian Currency Notes (FICN) from Dubai to India and in pursuance to the same, accused No.2, 3 and 6 together obtained counterfeit currency notes having face value of

Rs.24,16,000/- from the accused No.5 with the help of accused No.4 knowing the same to be counterfeit currency notes. Thereafter, for smuggling the fake currency notes to India, accused No.2 with the help of accused No.6 arranged one person by name Gopinatha Kurup as a carrier. The FICN was entrusted with Gopinatha Kurup on 10.03.2010 at Dubai Airport with an intention to use the same as genuine Indian currency notes in India through accused No.3. The aforesaid Gopinatha Kurup while carrying the said fake currency notes was apprehended by the DRI Officials , based on a tip off by one Moideen, at Nedumbassery International Airport on 11.3.2010 at 4.30 hours when he reached the said Airport in Flight No.EK-532. On these allegations , it is alleged that the accused No.2 to 6 have committed offense punishable under Section 120(B), 489(B), 489(C) of the Indian Penal Code.

3. Based on the report of the Directorate of Revenue Intelligence Officials Crime No. 655 of 2010 was registered at the Nedumbassery police station. Later,

investigation was taken over by the Crime Branch and thereafter and considering the gravity of the offense, the Ministry of Home Affairs transferred the further investigation of the case to the NIA on the strength of which the FIR was re-registered and the case was submitted to the Special Court for NIA Cases, Ernakulam.

4. During investigation it was revealed that the Accused No. 1/Abdul Majeed had entrusted the FICN with the carrier Gopinatha Kurup and the same was intended for the Accused No. 2/appellant .When it was revealed that Gopinatha Kurup was innocent , he was deleted from the array of the accused. The final report under S. 173 of the Code of Criminal Procedure was submitted before the Special Court on 14.02.2014, and as it was revealed during investigation of the role played by three more persons , permission was sought for to conduct further investigation and the same was granted. The said investigation has also been completed and the supplementary charge sheet is yet to be filed.

5. We have heard Sri Vipin Narayan, the learned Counsel for the Appellant and also Sri M. Ajay, the learned Special Public Prosecutor for NIA Cases.

6. The learned counsel for the appellant submitted that the appellant was arrested on groundless charges on 30.10.2013 and since then he is undergoing pretrial detention . He is sick and ailing and there are no material in the Final report submitted before the special court attributing any role to the appellant. It was further submitted that a perusal of the impugned order would reveal that the reasons given by the learned Special Judge for dismissing the application are not based on the materials revealed at the culmination of investigation. The learned counsel took us through the impugned order dated 21.11.2014 and submitted that though even the NIA has no case that the petitioner had engineered the operation sitting in the safe abode of Gulf Countries, the learned Special Judge has proceeded under that impression. It was submitted that the petitioner has not gone out of India after 2007 and the investigation by the

Agency would also reveal this fact. Further, in the impugned order, the special Court has made mention of statements seen by the learned Judge apparently given by the approver Gopinatha Kurup under S. 161 and S.164 of the Code where reference is made about the role played by the petitioner. It was submitted that no reference is made in the statement by the aforesaid Gopinatha Kurup. It was thus contented that the order was passed without proper application of mind and without perusing the material on record and prayed that the appeal be allowed and the petitioner be released on bail .

7. Sri M. Ajay, the learned Special Public Prosecutor submitted fairly that the contentions raised by the appellant with regard to the factual errors in the order dismissing the bail order are justifiable and correct. At the same time it was submitted that there are sufficient enough material in the Charge sheet laid by the NIA before the special court justifying the continued detention of the Appellant . It was submitted that some inadvertent

factual errors that has crept in the order passed by the Special Court may not be taken as sufficient enough reason to enlarge the petitioner on bail, in view of the impact and magnitude of the offence committed by him. It was submitted that the appellant is a habitual smuggler with a history of dealing in fake Indian currency notes. He is involved in various other crimes involving counterfeit currency, some of which are pending trial before various courts. It was pointed out that the appellant was absconding and he could be arrested only on 30.10.2013. The statements of Moideen recorded by the DRI as well as the statement of Sri Padmarajan, senior intelligence officer of the DRI reveals the role of the appellant, submits the learned special public prosecutor. The fact of completion of further investigation as against the other accused was also taken assistance of to persuade this court to set aside the impugned order and to direct consideration of the Bail application afresh on the basis of the material on record .

8. We have anxiously considered the rival

submissions. It is not disputed by the learned Special Public Prosecutor that certain factual mistakes have crept in the impugned order passed by the learned Special Judge. We also have no doubt that the allegations are serious since the conspiracy involved relates to smuggling of High Quality FICN, which, without any semblance of doubt, will destabilize the economy of the nation. But at the same time, the petitioner cannot be made to languish in the Jail if the material on record does not justify the same. The learned Special Court necessarily will have to advert to the materials in the Final Report while considering the bail application to ascertain the merits and demerits of the claim for bail raised by the appellant.

9. We are, therefore, of the considered opinion that it will be in the interest of justice to set aside the impugned order dated 21.11.2014 in Criminal M.P. No 287/2014 in SC No 1/2014 and remand the matter to the Special Court for fresh consideration, in accordance with law .

10. In the result, order dated 21.11.2014 in Criminal M.P. No 287 of 2014 in SC No 1/ 2014 (NIA) on the file of of the Special Court for Trial of NIA Cases , Ernakulam, is set aside. The learned Special Judge is directed to consider the application submitted by the Appellant/Accused No. 2, afresh and to pass orders in accordance with law, at any rate, within 2 weeks from the date of receipt of a copy of this judgment.

Crl.Appeal is disposed of as above.

Sd/-

V.K.MOHANAN
Judge

Sd/-

RAJA VIJAYARAGHAVAN.V
Judge

MrCS

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P.S.To Judge