

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.09.2015

DELIVERED ON : 23.09.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH  
Crl.O.P.No.15336 of 2015

1.Sugananthan  
2.Muralitharan  
3.Prakash

.. Petitioners

Vs

1.The Superintendent of Police  
C.B.C.I.D., Cyber Crime Cell  
Egmore, Chennai 600 008.

2.State rep by  
Inspector of Police  
CBCID, Cyber Crime Cell  
Egmore, Chennai 600 008  
Cr.No.3/2013.

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the first respondent to recall the Look out circular issued by the 1st respondent to the immigration authorities at the airports or to pass any such order whereby, against the petitioners/accused No.3,4 and 6 in Cr.No.3 of 2013 in C.C.No.904 of 2015.

For Petitioners  
For Respondents

Mr.G.M.Shankar  
Mr.C.Emalias,  
Addl.Public Prosecutor

O R D E R

This petition has been filed to direct the first respondent to recall the Look out circular issued by him to the immigration authorities at the airports, against the petitioners/accused No.3,4 and 6 in Cr.No.3 of 2013 in C.C.No.904 of 2015.

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the State.

3. On 27.05.2013, "Q" Branch CID Chennai registered a case in Cr.No.3 of 2013 for offences under Sections 120(B), 420, 465, 468, 471, 380, 511 IPC r/w Sections 66, 66C, 66(B) of the Information Technology Act, 2000 against 8 persons.

4. It is the case of the police that Mohammed Imran [A1] and Senthil Kumar [A2] were attempting to withdraw money using fake ATM cards from the Canara Bank ATM Centre, situated inside the Domestic Airport, Chennai. During the course of investigation, the names of Sugananthan, Muralitharan, Prakash and Chandra Mohan surfaced and they were arrested by the police on 29.05.2013. All the four applied for bail and this Court granted them bail in CrI.O.P.Nos.18138 to 18140 of 2013 on 06.07.2013, on the following conditions:

"(i) The petitioners shall execute a bond for a sum of Rs.5,00,000/- (Rupees five lakhs only) with two sureties; one surety for each of them shall be a Government Servant and one surety must be a close blood relative of them, if they have relations in India and if they do not have, execute one local surety who shall be a resident of the place wherein the sureties should have resided for more than 7 years continuously; each for a sum of Rs.1,00,000/- to the satisfaction of the learned Judicial Magistrate Court, Alandur."

5. The four accused furnished sureties and they were released on bail. The learned Judicial Magistrate, Alandur who accepted the sureties conducted enquiry and found that, the four accused had given bogus sureties and therefore, their bail bonds were cancelled and they were directed to be taken into custody. Accordingly, all the four accused were re-arrested on 21.03.2014. All the four accused filed M.Ps.1 to 1 of 2014 in CrI.O.P.Nos.18138 to 18140 of 2013 praying for modification of the conditions imposed earlier and for release on bail. This Court by order dated 22.04.2014 modified the conditions that were imposed earlier in the order dated 06.07.2013 and directed their release on bail. Accordingly, they furnished the necessary surety bonds and they were released on bail.

6. It is seen that the Government of Tamil Nadu by order dated 06.02.2014, lodged all the four accused, who are foreigners, in the Special Camp at Chengalput, in exercise of the powers under Section 3(2)(e) of the Foreigners Act, 1946. The petitioners made a request to the Government that, instead of lodging them in the Foreigners Camp, they may be permitted to stay in the house of one A.Rajarathinam, Sri Lankan National at No.29 3<sup>rd</sup> Main Road, VGP Layout, Palavakkam, Chennai. The Government accepted their request and the detention order dated 13.06.2013 was modified by order dated 06.02.2014 permitting the four accused to stay in the said address and further adhere to the bail conditions, if any, with an undertaking that they will not leave India without the permission of the Court in the case registered against them. While granting bail for the second time, on 22.04.2014, this Court had directed the four accused to appear before the CBCID, Cyber Crime Cell daily

twice at 10.30 a.m. and 5.30 p.m. for a period of one month and thereafter, daily at 10.30 a.m. until further orders. This condition for reporting before the respondent police was later modified by orders dated 09.06.2014 and 13.06.2014 by this Court, directing the four accused to appear on certain conditions alone. The four accused defaulted in complying with the conditions relating to reporting before the police and therefore, when the police made enquiries at the residence of Rajarathinam where the accused were supposed to reside, they were not found there. Hence, the police have moved the cancellation of bail applications.

7. This Court ordered notice to all the four accused in the cancellation of bail applications filed by the police. Since the four accused were not available, the Court was not able to serve notice on them in the cancellation of bail applications. Therefore, the police gave look out circular for detaining the four accused, if they were found moving out of the Country. While so, Suganathan, Muralitharan, Prakash and Chandramohan were arrested by 24 Parganas North Police, Bangoan District, West Bengal in FIR No.720 of 2014 under Section 14 of the Foreigners Act, when they illicitly tried to cross the borders into Bangladesh. They were lodged in Kolkatta Prison and subsequently, Chandramohan was enlarged on bail and the other three accused were charged for an offence under Section 14 of the Foreigners Act before the Additional Chief Judicial Magistrate, Bangoan in G.R.No. 2160 of 2014.

8. On 17.04.2015, they pleaded guilty to the charge and the learned Additional Chief Judicial Magistrate, Bangoan passed the following order:

"Considering the materials on record and the petition filed by the accused persons pleading their guilt voluntarily, they are convicted u/s 241 Cr.P.C for the offence u/s 14 Foreigners Act and sentenced to suffer S.I. for 254 days each, and also to pay a fine of Rs.2,000/- each, I.D. to S.I. for 10 days each which is considered to be just and proper for ends of justice. The period of sentence is set off against the period of detention already undergone by them (they are in J.C. Since 21.08.14).

After completion of their sentence they be pushed back to Canada

Issue jail warrant accordingly."

9. In the meantime, investigation in Cr.No.3 of 2013 was completed by the CBCID, Cyber Crime Cell police and Final Report was filed in C.C.No.904 of 2015 against 6 accused including the four accused, namely Suganathan, Muralitharan, Prakash and Chandra Mohan before the XI Metropolitan Magistrate, Chennai for offence under Sections 120B, 465, 420, 468, 471, 380, 511 IPC and Sections 66, 66(C) and 66(B) of the Information Technology Act,

2000 @ 474 r/w 465 and 120(B) IPC. After the period of sentence imposed on the three accused, viz., Suganathan, Muralitharan and Prakash, when they attempted to leave India, they were detained in West Bengal on account of the look out circular that was issued by CBCID, Cyber Crime Cell police, Tamil Nadu and therefore, they are now detained in Dum Dum Central Correctional Home, Kolkata. On coming to know of the fact that the look out circular has been issued, Suganathan, Muralitharan and Prakash filed Crl.O.P.No.15336 of 2015 for recalling the look out circular. At that time, it was brought to the notice of this Court that, the cancellation of bail applications filed by the police against the four accused are pending without service of notice on the accused.

10. Mr.Shankar, learned counsel for the petitioners submitted that, the look out circulars could be issued only as against Indian Nationals and not Foreigners. The answer to this question has been provided in paragraph 25.9 of the Circular, which is self explanatory:

"25.9 The Look Out Circulars are opened to trace the absconding criminals and also to prevent and monitor effectively the entry or exit of persons who may be required by law enforcement authorities."

11. In support of the said contention, Mr.Shankar, learned counsel relied upon the following judgments of this Court.

| S.No. | Date       | Description of Documents                                              |
|-------|------------|-----------------------------------------------------------------------|
| 1     | 29.04.2015 | T.Ayyasamy v. Superintendent of Police and another                    |
| 2     | 24.06.2015 | Balvir Singh and ors v. Superintendent of Police, CBI & Ors           |
| 3     | 02.07.2015 | S.N.Amarnath and another v. Commissioner of Police, C.C.B. and others |
| 4     | 28.08.2015 | V.V.Sarathkumar v. Commissioner of Police, Chennai                    |

12. As regards the judgments relied upon by the learned counsel, they are cases arising in respect of persons who are Indian nationals, who were already arrested and were on bail and had sought permission for suspension of look out notice, either on health grounds or on the ground that they require to report before their foreign employer, lest they lose their job. Whereas, the facts of this case is, the accused herein are foreigners and at one time they furnished bogus sureties, on account of which they were rearrested and after their release, they had become scarce. If not for the look out notice issued by the CBCID, Cyber Crime Cell, the accused would have slipped out of India long back.

In the result, this petition is dismissed.

Sd/-  
Assistant Registrar

True Copy

Sub Assistant Registrar

gms

To

1.The Superintendent of Police  
C.B.C.I.D., Cyber Crime Cell  
Egmore, Chennai 600 008.

2.The Inspector of Police  
CBCID, Cyber Crime Cell  
Egmore, Chennai 600 008

3.The Public Prosecutor  
High Court of Madras  
Chennai 600 104.

1 cc to Mr. G.M.Shankar, Advocate Sr.No.51773/15

Cr1.O.P.No.15336 of 2015

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