

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.05.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.7709 of 2020

1. Husaini
2. Shanur Usman
3. Donny Solichan Mandang
4. Indrahayu
5. Mandi Gaebe
6. Andi Makkasau Karjani
7. Muh Rusli Roddihng
8. Amin Thohar Mustar
9. Ramli
10. Iswardi
11. Mukhat Soleman Petitioners

Vs.

State rep. By
Inspector of Police,
B3 - Kitchipapalayam Police Station,
Salem.
(Crime No.229/2020) Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioners on bail in Crime No.229 of 2020 on the file of the Kitchipapalayam Police Station, Salem.

For Petitioners : Mr.Ajmal Khan, Senior Counsel

for Mr.K.M.Aasim Shehzad

BFS Legal

For Respondent : Mr.A.Natarajan

State Public Prosecutor

O R D E R

The petitioners were arrested and remanded to judicial custody on 16.04.2020 for the offences punishable under Sections 269, 270, 278 IPC, Sec.13, 14 of the Foreigners Act, 1946, Sec.3 of Epidemic Act, 1897, Sec.58(4) of Tamil Nadu Public Health Act 1977

and Sec.51(b) of National Disaster Management Act, 2005 in Crime No.229 of 2020 on the file of the respondent police, seek bail.

2. The case is that the petitioners, who are the citizens of Indonesia, came to India on tourist visa and they came to Salem and have conducted religious meeting. During the meeting, they violated the rules of the Government of Tamil Nadu and the Central Government. They have not followed the social distancing during the religious meeting. Therefore, the police registered a case. Further, the respondent police altered the charges by including Section 353 IPC. The petitioners, along with other accused, have caused the spread of Covid-19 among the people in Salem. Hence, on the complaint given by the Village Administrative Officer, the case came to be registered.

3. The learned counsel for the petitioners submitted that all the petitioners, are the citizens of Indonesia. They had visited India on a valid visa issued by the Government of India. They had visited India during their holidays to experience Indian culture, traditions, hospitality and food. On their arrival in New Delhi Airport, all the petitioners were subjected to Covid-19 virus test and found negative and only then, they were permitted to leave the Airport. Thereafter, they came to Salem and stayed at Rahmath Nagar Masjid in Kitchipalayam Police Station limit. As a devout muslim, they used to offer prayer five times a day and they have not propagated any religious activity. They were staying in the mosque, where there had interactions with the local Muslim people. Other than this, they have no other religious activity. Further, in this case, 18 persons were shown as accused and almost except these 11 persons who are citizens of Indonesia, others have been granted bail.

4. The learned counsel for the petitioners further submitted that the petitioners were tested for Covid-19 and the test proved negative. The petitioners, even before arrested, were taken to the Government Hospital and they were checked for Covid-19. The petitioners, due to the travel, restriction unable to go back to their home and they never violated any provisions of the Foreigners Act. The passports of the petitioners were taken and seized by the respondent police and the petitioners were lodged in the prison and thereafter, presently, the petitioners are lodged in the Sub-jail, Saidapet, Chennai.

5. The learned counsel for the petitioners further submitted that the foreign nationals, who are facing similar accusation as that of the petitioners, have all been granted bail and now, they are staying in the Special Camp at Puzhal, Chennai. The Government of Tamil Nadu, by G.O.(2D), No.99, dated 22.04.2020, had declared that the premises of the Transit Yard

nationals who have violated the visa conditions and committed other offences. Stating so, the learned counsel prayed that the petitioners may be granted bail and accommodated in the Special Camp at Puzhal, Chennai.

6. The learned Public Prosecutor submitted that the petitioners, who are the citizens of Indonesia, stayed from 13.03.2020 at Shevapet Paramakkan Masjid. During the said period, the petitioners along with the other accused have conducted their religious meeting without following the social distance and by violating the rules and thereby caused disturbance to the steps taken by the Government for preventing the spread of Covid-19 and the petitioners and the other accused are the main cause for the spread of Covid-19 among the people in Salem. Hence, on the complaint given by the Village Administrative Officer, the petitioners were arrested in this case. Initially, they were lodged in Central Prison, Salem, and thereafter, they have been transferred to Sub-jail, Saidapet, Chennai. The petitioners' passports have been seized and deposited before Judicial Magistrate-II, Salem. Since the petitioners are the citizens of Indonesia, they have no source of income. If they were released on bail, they would be only wandering and mix with others continuing their religious activities which will end in causing spread of epidemic and the entire exercise done by the Government in controlling Covid-19 would be spoiled. He further submitted that the petitioners though had come on tourist visa, they had never visited any place of interest and on the other hand, they have been staying only in Masjid and carrying out their religious propaganda.

7. Considering the rival submissions made on either side and on perusal of the records, it is admitted that the petitioners are the citizens of Indonesia and were subjected to Covid-19 screening on their arrival in New Delhi Airport and found negative and thereafter, they were permitted to leave the Airport and they had reached Salem and stayed in the mosque at Salem and the petitioners were taken to the Government Hospital, where they were tested for Covid-19 and the test on the petitioners found negative. Hence, the petitioners so far had no contact of Covid-19 virus and they are not the cause for the spread of Covid-19. Further, the petitioners' passports are already seized by the respondent police and deposited before the Judicial Magistrate-II, Salem. Hence, chances of fleeing away is not there. Further, the petitioners have entered into India only through valid documents. Almost all the accused in this case have been granted bail and A12 in this case was granted bail by this Court in CrI.O.P.No.7273 of 2020 on 06.05.2020. Likewise, for foreign nationals similarly placed, this Court, in CrI.O.P.Nos.7512, 7513 and 7002 of 2020, granted bail.

8. In view of the above, this Court is inclined to grant bail to the petitioners, subject to the following conditions:

(a) the petitioners shall execute their own bonds for a sum of Rs.10,000/- (Rupees ten thousand only) each before the Superintendent of the concerned prison;

(b) the petitioners shall not leave the Chennai city;

(c) further, in view of G.O.(2D), No.99, dated 22.04.2020, the petitioners on their release from Sub-jail, Saidapet, be lodged at the Special Camp at Puzhal, Chennai.

-sd/-

20/05/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE-II, SALEM

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
B-3, KITCHIPAPALAYAM POLICE STATION, SALEM.

5 THE SUPERINTENDENT,
SPECIAL CAMP AT PUZHAI, CHENNAI

6 THE OFFICER INCHARGE
SUB JAIL, SAIDAPET, CHENNAI

CC to M/S.BFS LEGAL Advocate on payment of necessary charges

CRL OP.7709/2020

Date :20/05/2020