

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.10.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.19773 OF 2021

1. Choi Yong Suk
S/o Baek Kyu Choi

2. Choe Jaewon
S/o Choe Yangyel

... Petitioners

- Vs -

The State by
The Inspector of Police,
D-3, Palur Police Station
Chengalpettu District.

... Respondent

Criminal Original Petition has been filed under Section 438 Cr.P.C, praying this Court to enlarge the petitioners on bail in the event of their arrest by the respondent police in connection with Crime No.408 of 2021.

For Petitioners : Mr. Jerry V.V.Sundar

For Respondent : Mr. C.E.Pratap, GA (Crl. Side)

ORDER

An act, which is an economic violation, was alleged to have been perpetrated by the petitioners, who are South Korean nationals and who are said

to be Managing Director and General Manager of the firm, viz., M/s.Chowel India Private Ltd. The allegations against the petitioners is that they had committed evasion of GST, which has led to the filing of a case in E.O.C.C. No.1/2020 on the file of the Addl. Chief Metropolitan Magistrate, E.O.-I, Egmore.

2. In the said case, the petitioners were arrested in the year 2019 and were sent to prison at Puzhal and on obtaining bail, they were lodged at the Foreigners Detention Camp at Trichy. Though the petition filed by the petitioners seeking stay at their residence was rejected by this Court, however, on appeal, the Hon'ble Apex Court had granted them the relief with a direction to the State to keep them under detention at their residence under security for which the petitioners were directed to bear the costs. In compliance with the said direction, the petitioners are now under confinement in their house with necessary security for which the petitioners are bearing the cost.

3. The matters as it stand aforesaid, the present complaint has been made by the defacto complainant alleging that he is working under the petitioners as driver and general assistant, who procures the food and other requisite items for the petitioners day to-day living and that he was approached by the petitioners to obtain two tickets in the name of certain other persons for proceeding to Calcutta

via Bangalore for onward transit to Imphal, with a view to flee from the jurisdiction of this Court by using Aadhar cards belonging to some other persons and in that respect money was also paid to the defacto complainant for completing the said task. It is the further case of the prosecution that the petitioners had also requested the defacto complainant to provide a car for their transportation to the airport. On the basis of the above allegation, the present complaint was filed leading to the registration of the FIR.

4. The petitioners, apprehending arrest for the alleged offences u/s 420, 468, 471, 224 and 511 IPC in Crime No.408 of 2021 on the file of the respondent police have filed the present petition seeking enlargement on bail in anticipation of their arrest.

5. Learned counsel appearing for the petitioners submit that the petitioners are foreign nationals and considering their stature and their request, the Hon'ble Apex Court had permitted them to be kept under custody in their residence under necessary security for which the petitioners are paying more than Rs.3 Lakhs per month. It is the further submission of the learned counsel for the petitioners that five police personnel and two armed guards have been deputed by the State towards keeping them in secured custody, the cost of which

is borne by the petitioners.

6. It is the further submission of the learned counsel that the complaint is a false and cooked up complaint by the defacto complainant only to absolve himself from paying the amount of Rs.7 Lakhs received by him from the petitioners to meet out his commitments. When the petitioners sought for return of the amount, the defacto complainant had lodged the complaint against the petitioners only with a view to implicate them in an offence so that he may not be required to pay the amount due to the petitioners.

7. Learned counsel appearing for the petitioners submitted that the Hon'ble Apex Court had granted them the relief of being kept in custody in their residence against the order of this Court to keep them in the detention camp and that being the case, this Court may also consider imposing similar condition by keeping them in custody at their residence, in the event of arrest, as any other order passed by this court would not only work hardship to them, but would also be against the orders passed by the Hon'ble Apex Court.

8. It is the further submission of the learned counsel for the petitioners that they are contributing to the economic growth of the country by their

business activities and that their right to life and liberty is protected under Article 21 of the Constitution of India, they being foreign nationals and, therefore, this Court, in the interest of justice, may grant anticipatory bail to the petitioners with a tag to keep them in custody at their residence, in the event of arrest, as ordered by the Hon'ble Supreme Court in addition to any other conditions that may be imposed by this Court.

9. Learned Government Advocate (Crl. Side) submitted that the order passed by the Hon'ble Supreme Court in respect of GST violations alleged against the petitioners would not enure to the benefit of the petitioners in the present case, as it is only for the said case, the Apex Court had granted the relief. The allegations against the petitioners, in the present case is that they are trying to flee out of the jurisdiction of this Court and further the benefit granted by the Apex Court for economic violations cannot be the ground to grant similar relief for the reason that the relief granted by the Hon'ble Supreme Court, as a benevolent measure is being tried to be utilised by the petitioners to flee out of the country, which cannot be allowed by this Court.

10. It is the further submission of the learned Government Advocate (Crl. Side) that the petitioners have utilised the Aadhar cards of certain other persons,

which shows that the biometrics and the unique identification of certain individuals are being misused by the petitioners, which reveals a larger conspiracy involving the safety and security of the country and enlarging the petitioners on bail at this point of time would cause much hardship and detriment to the investigation in view of the affluent nature and strong financial position of the petitioners and, therefore, vehemently opposed grant of anticipatory bail.

11. This Court has paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

12. Before embarking upon appreciating the factual aspects of the matter before this Court, it would be useful and relevant to point out that recently this Court had come across a spate of cases in *Crl. O.P. Nos. 5875/2021, etc. batch* where it was noted that very many foreign nationals are within the territorial jurisdiction of the country without having valid visa and in some cases, they have entered the country through illegal means and have been staying here for years together. In fact, the Court in the said case, with pain had noted that 13,289 persons are said to be overstaying their visa period, as per the data provided by

the International Check Post. The Court also noted that the said number pertains only to the districts of Chennai, Trichy, Coimbatore and Madurai, leaving aside the other parts of the country. The above number pertained only to four districts within the State. Since very many inconsistencies and infirmities were noted with regard to the stay and dealing of the governmental agencies with regard to deportation of the foreign nationals and, therefore, this Court had issued a slew of directions with a view to safeguarding the security of the nation.

13. Therefore, from the above, it is clear that foreign nationals, while they are guests on our soil so long as they are bound by the laws of the land and are following the same, any infraction of the laws would not give them any leverage to claim the benefit of Article 21 of the Constitution. All the laws towards safeguard of the life and liberty of individuals are only for persons, who respect, abide and follow the said laws and the said leverage is not for such of those persons, who flout the said laws for their gain to the detriment of the nation and its growth. Therefore, it is not open to the petitioners to claim refugee under Article 21 of the Constitution for getting certain benefit, when they are alleged of certain serious offences.

14. Further, it is to be pointed out that with a view to lure investors to

invest in development projects for the growth of the nation, the Indian Government gives very many attractive and lucrative benefits for the business entities, who intend to start business within the territorial jurisdiction of our country. Though many of the multinational companies, utilising the benefits given by the Government, start business and benefit both themselves and the society, however, few unscrupulous elements, utilising the said opportunity, under the guise of starting business, try to erode the economic stability of the country by resorting to acts, which have far reaching economic ramifications.

15. In the case on hand, true it is that for economic violations, though bail was granted by this Court with a caveat to the petitioners to stay at the detention camps, however, the petitioners have knocked the doors of the Hon'ble Supreme Court and obtained favourable orders for being held in custody at their residence, which has since been granted.

16. True it is that the petitioners, for being held in custody at their residence, are shelling out a wad of money from their pocket. But it is they who cried before the Hon'ble Supreme Court for such an order. It is to be pointed out that nothing comes for free and more so when the petitioners have taken the Government for a ride by throwing the laws to the wind and not making the

requisite GST payment for which proceedings have been initiated against them, they cannot come and cry that they are paying money for being held in custody in their residence. Further, it is to be pointed out that the police personnel are appointed by the State for the purpose of safeguarding the safety and security of the law abiding citizens and such personnel cannot be put to use to safeguard individuals, such as the petitioners, who are accused in a crime for which trial has been launched against them.

17. *In the background of the above facts, this Court poses to itself a question. When such an order like holding the petitioners in custody at their own residence is passed in favour of the foreign nationals, viz., the petitioners herein, could the same yardstick be extended to any of the person, who is a citizen of this nation for any type of offence committed by him, be it economic offence or otherwise on the sole premise that the said individual would bear all the cost for extension of the said relief.* It is to be pointed out that time and again the Hon'ble Supreme Court has categorically held that economic offences are more graver offence than any other type of offence for the mere reason that while many of the other types of offences are committed against individuals or a group, but in the case of economic offence it is committed against a nation, which in effect affects the entire population in the country.

18. It has been observed by Hon'ble P.N.Bhagawati, J., (as His Lordship then was) in ***Dwarika Prasad Sahu – Vs – State of Bihar & Ors (1975 (3) SCC 722)*** that *“economic offenders are a menace to the community and it is necessary in the interest of the economic well-being of the society to mercilessly stamp out such pernicious, anti-social and highly reprehensible activities as hoarding, black marketing and profiteering which are causing havoc to the economy of the country and inflicting untold hardships on the common man and to carry on a relentless war against such economic offenders with a view to putting them out of action.”*

19. As has been aptly, eruditely and with great pain expressed by their Lordships of the Hon'ble Supreme Court, the growth of the country is dependent on the economic stability and viability of the business establishments which adhere to the law and any unjust enrichment by the establishment would erode the economy of the country. More stringent provisions with regard to economic activity is envisaged insofar as foreign establishments are concerned, through they are granted very many incentives for expanding their business for the growth of the country. However, in the case on hand, the petitioners, after failing to pay the GST, as is alleged by the respondents, and taking asylum under

the orders of the Hon'ble Supreme Court by staying cool and comfortable in their own residence under security and enjoying a lavish life, which seldom an accused in any other case or an accused/foreign national in any other country could enjoy and the petitioners are trying to use the leverage given to them by the Hon'ble Supreme Court by resorting to clandestine activities to move out of the jurisdiction of this Court.

20. To substantiate their case, the respondent has placed before the Court materials, which show that using Aadhar cards of other persons, tickets are alleged to have been purchased by the petitioners to move out of the jurisdiction of this Court. Though the petitioners claim that it is only due to the friction between the defacto complainant and the petitioners with regard to some monetary transaction that has resulted in the defacto complainant giving the complaint against the petitioners only to wriggle out of the calamity to pay the amount to the petitioners, no material whatsoever has been placed before this Court by the petitioners to substantiate their case with regard to payment made to the defacto complainant. Mere contention on the part of the petitioners with regard to parting with a sum of Rs.7 Lakhs to the defacto complainant without any proof of the same could not be taken in aid of by the petitioners to canvass before this Court that it is only to come out of the predicament the defacto

complainant had given the complaint.

21. Further, it is to be pointed out that even if the petitioners claim that it is only a false complaint, necessarily the antecedents of the petitioners is a basic factor, which requires to be weighed by this Court before granting the prayer made by the petitioners. The petitioners are accused in alleged GST violations and the petitioners being foreign nationals, were initially sent to the detention camps, however, the petitioners approached the Hon'ble Apex Court and obtained orders for staying at their residence under security from the Government, though they are paying for the same. The attitude of the petitioners clearly show that the petitioners would go to any extent to come out of the situation in which they have put themselves. That being a very important circumstance, necessarily the same has to be looked into carefully by this Court.

22. As already pointed out above, the Hon'ble Supreme Court has given the petitioners, who are accused in the case of alleged GST violation taking a holistic view of the case and in the said backdrop, the relief granted by the Hon'ble Supreme Court to the petitioners could be only be labelled to be a benevolent gesture may be for the reason that the petitioners would have pleaded that they would meet out the cost towards the security to be given to

them.

23. But when other allegations are made against the petitioners, as has been portrayed in this case, this Court cannot take the order by the Hon'ble Supreme Court as a blanket permission to grant such a relief to the petitioners in every case that is put against them. The Court has to weigh the issue before it, coupled with the nature of the allegation now made, and take a conscious decision in the facts and circumstances of the case.

24. As already pointed out above, the gravamen of the allegation made against the petitioners is that they being on bail, under house arrest, are trying to flee the country by using fake identities. Without a full fledged investigation, it would not be possible to find out the truth or otherwise in the matter. Further the affluency of the petitioners would also be a problem for the investigating agency to probe the issue, as the affluent nature of the petitioners stares writ large on the face of this Court which aspect cannot be brushed aside on the facts and circumstances of this case.

25. Further, it is to be pointed out that the benevolent gesture extended to the petitioners by the Hon'ble Supreme Court is only on the face of the

materials placed before the Hon'ble Supreme Court in the earlier round of application and that cannot be taken as a blanket order for all the allegations that may be alleged against the petitioners at a point of time later to the one when the Hon'ble Supreme Court granted the said order. The order of the Hon'ble Supreme Court is only to the limited extent of the case before it then and it cannot be extended to the present case as well.

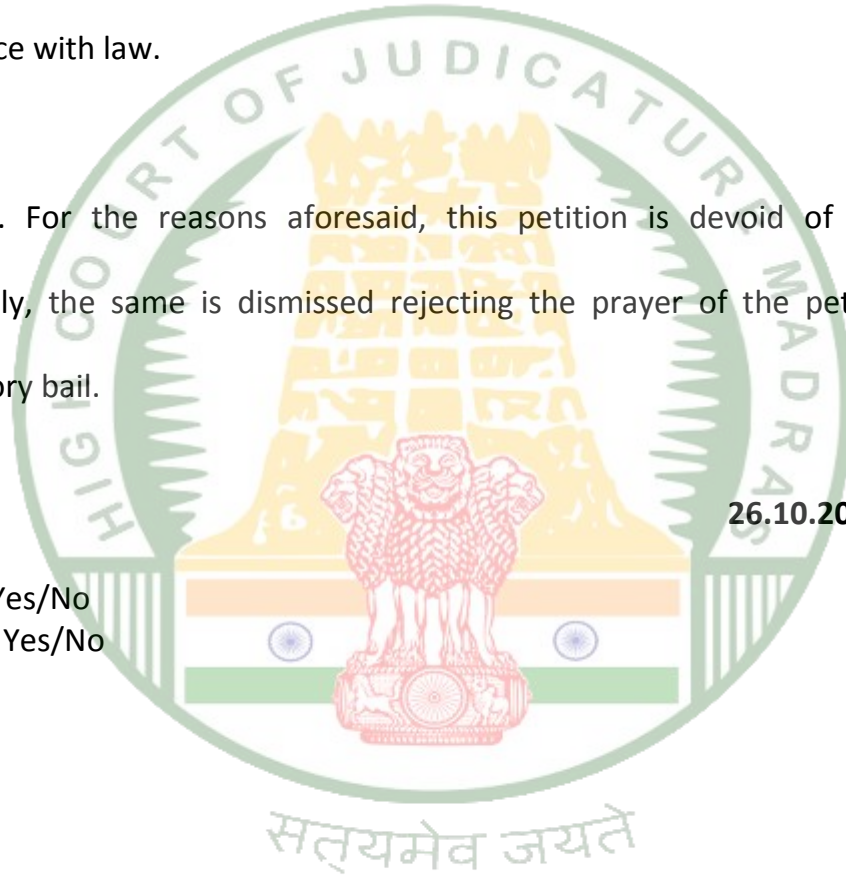
26. In the wake of the discussions made above, the allegations made against the petitioners being very grave in nature and that by virtue of the benevolent order, the petitioners are trying to use the same to their advantage by resorting to alleged acts, which are not in consonance with the spirit in which the previous order was granted to the petitioners by the Hon'ble Supreme Court and in fact the act of the petitioners is nothing but an attempt to ridicule the order of the Hon'ble Supreme Court, and also taking into consideration the gravity of the allegations made against the petitioners and also the past antecedents of the petitioners, this Court is of the considered view that the benefit granted by the Hon'ble Supreme Court was only for the said case and it cannot stand extended to this case. Further, the nationality of the petitioners warrant that they should abide by the rule of law of this land and no special treatment could be meted out to the petitioners in this case. Such being the

case, it is incumbent on the respondent police to proceed in accordance with law insofar as investigation and take further course of action in the matter without in any way being influenced by the order passed by the Hon'ble Supreme Court, as the said order would in no way stand in the way of the respondent to act in accordance with law.

27. For the reasons aforesaid, this petition is devoid of merits and accordingly, the same is dismissed rejecting the prayer of the petitioners for anticipatory bail.

26.10.2021

Index : Yes/No
Internet : Yes/No
GLN



WEB COPY

To

1. The Inspector of Police,
D-3, Palur Police Station
Chengalpettu District.
2. The Public Prosecutor
High Court, Madras.



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M.DHANDAPANI, J.

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