IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2022

PRONOUNCED ON : 25.03.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRL.A.NOS.114 & 145 OF 2022

Johnson Samuel ... Appellant/Petitioner/ Accused No.4 in Crl.A.No.114 of 2022

L.Sellamuthu ... Appellant/Petitioner/ Accused No.5 in Crl.A.No.145 of 2022

.Vs.

The State represented by
The Inspector of Police,
Q-Branch CID,
Chennai.
(Crime No.01/2021) ... 1st Respondent/Complainant in both appeals

The National Investigation Agency,
Chennai. ... 1st Respondent/Complainant in Crl.A.No.114 of 2022

The Inspector of Police,
National Investigation Agency,
Chennai. ... 2nd Respondent/Complainant in Crl.A.No.145 of 2022

(R2 suo motu impleaded as per the order of this Court dated 21.02.2022 in Crl.A.No.114 of 2022)

(R2 suo motu impleaded as per the order of this Court dated 01.03.2022 in Crl.A.No.145 of 2022)

PRAYER IN CRL.A.NO.114 OF 2022:-

Criminal Appeal filed under Section 439 Cr.P.C. r/w 25(1) of the National Investigation Agency Act, 2008, to set aside the order dated 25.11.2021 passed in Crl.M.P.No.5816 of 2021 on the file of the Principal Sessions Court, Kancheepuram District at Chengalpattu and to enlarge the appellant on bail.

PRAYER IN CRL.A.NO.145 OF 2022:-

Criminal Appeal filed under Section 21(2) of the National Investigation Agency Act, 2008, to set aside the order dated 15.12.2021 passed in Crl.M.P.No.6373 of 2021 on the file of the Principal Sessions Court, Kancheepuram District at Chengalpattu and to enlarge the appellant/accused no.5 on bail in Crime No.1 of 2021 on the file of the first respondent/police.

For Appellant in Crl.A.No.114 of 2022	:	Mr.G.Mohanakrishnan
For Appellant in Crl.A.No.145 of 2022	:	M/s.G.V.Shoba
For R1 in both appeals	:	Mr.R.Muniyapparaj Additional Public Prosecutor
For R2 in both appeals	:	Mr.R.Karthikeyan Special Public Prosecutor (NIA)

COMMON JUDGMENT

P.N.PRAKASH, J.

These appeals have been preferred under Section 21 of the National Investigation Agency Act, 2008 (for brevity "the NIA Act") by Johnson Samuel (A4) and Sellamuthu (A5) against the orders passed by the Principal Sessions Court, Kancheepuram District at Chengalpattu, dismissing their bail petitions.

2. In view of the commonality of facts, these two appeals are considered and decided by this common judgment.

3. One Mary Franciska Letchumanan (for brevity "Mary") was intercepted on 01.10.2021 at the Chennai Airport, while she was on her way to Mumbai and a case in Q-Branch CID Crime No.1 of

2021 for the offences under Sections 12(1)(b), 12(1-A) (a) of the Passport Act, 1967, r/w Sections 420, 465, 468 and 471 IPC r/w Section 14(a) of the Foreigners (Amendment) Act, 2004, was registered by the State police.

4. The investigation conducted by the Q-Branch CID revealed that Mary is a Srilankan national and had obtained a fake Indian passport and Indian voter identity card; she had entered into India at the instance of one Umakanthan, who is a LTTE cadre operating from Denmark, for the purpose of siphoning off a sum of Rs.42.28 crores deposited in the dormant accounts of three Indians, viz., Hamida A Lalljee, Arshia A Lalljee and Iskander A Lalljee in Indian Overseas Bank, Fort Mumbai Branch; the money was intended for financing the activities of the LTTE.

5. After the arrest of Mary, it came to light that she was being actively assisted by some others, including Johnson Samuel (A4) and Sellamuthu (A5) in the enterprise.

6. Mr.G.Mohanakrishnan, learned counsel for Johnson Samuel (A4) submitted that the latter is a practising Advocate and he had given only legal assistance to Mary, for which, he cannot be made liable.

7. Ms.G.V.Shoba, learned counsel for Sellamuthu (A5) submitted that the latter is a Financier by profession and when Mary approached him, he gave her a loan of Rs.10,000/- for her medical treatment, for which, he cannot be prosecuted for the aforesaid offences.

8. This Court gave its anxious consideration to the aforesaid submissions and also perused the case diary.

9. The allegation against Johnson Samuel (A4) is that he had helped Mary in the preparation of fake and false documents viz., aadhar card and PAN card in the names of Hamida A Lalljee and Iskander A Lalljee.

10. In paragraph no.11 of the counter affidavit in Crl.A.No.114 of 2022, it is stated as follows:

> "11. It is further submitted that in order to achieve their illegal goal, accused, A1-Letchumanan Mary Franciska entered into a criminal conspiracy with A4 Johnson Samuel/Appellant and discussed about her plan to siphon Rs.42.28/- crores lying in the IOB account in Fort Mumbai Branch, for which the accused A1 has agreed to give a share of 20% of the total amount of Rs.42.28/- crores to the accused A4 Johnson Samuel/Appellant. Thereby the

available evidence would prove prima facie that the accused A1 and A4 have conspired together and impersonated Iskandar A Lalljee with A7-Mohan with the active assistance of A6-Dharmendiran to siphon off the huge money lying in the joint account of the Hamida A Lalljee, Iskanthar A Lalljee and Arshia A Lalljee maintained in the IOB Fort Mumbai Branch and utilize it for the revival of LTTE in India."

11. Thus, from the above extract, it is seen that Johnson Samuel (A4) had not actually rendered legal assistance to Mary, but, has used his laptop for creating a fake PAN card in the name of Iskander A Lalljee and has affixed the photo of one Mohan (A7) on the fake PAN card.

12. As regards the role of Sellamuthu (A5), it is stated as follows in paragraph no.4 of the counter affidavit in Crl.A.No.145 of 2022:

"4) I submit that A1 Letchumanan Mary Franciska approached Appellant/A5 Chellamuthu for a financial help and there he stated to A1 that he had dealing with only land documents for the finance. At the time she asked him for a death certificate in the name of Arshia A Lalljee. He accepted to do the same and gave Rs.10,000/- to an agent in the name of Banu for preparation of death certificate in the name of Arshia A Lalljee and he had also given Rs.10,000/- to accused A1 for her incidental expenditure at her request to go over to Mumbai for her bank processing. On the search of A5/Appellant I-phone, the pan card details of Hamida A Lalljee, Arshia Althaf Lalljee and the copy of the Power of Attorney in the name of Hamida A.Lalljee to Mary Franciska and other account details are found available. He colluded with A1 for grabbing the money from Mumbai Account and he also travelled with A1 and A2 to Thirupathi and Thiruchendur temples. The Appellant/A5 was very well aware of the master planner and conspirator who was a LTTE cadre living in Denmark. A-5 Chellamuthu was aware that the said money was supposed to be used for terror funding of the banned LTTE organisation. During custody A1 has revealed various roles played by persons with international links and a broader role played by A5 Chellamuthu where he has paid huge amounts of money expecting a share and was aware that this amount would be distributed for purposes as directed by Umakanthan a LTTE cadre."

13. It is seen that the investigation of this case has been transferred from the file of the Q-Branch CID to the file of the National Investigation Agency (for brevity “the NIA”) on the order dated 17.01.2022 passed by the Central Government and the case has been re-registered as R.C.No.02/2022/NIA/DLI. We find that the investigation is at the preliminary stage.

14. Bail can be granted to an accused, who is facing a prosecution under the Unlawful Activities (Prevention) Act, 1967, only, if the Court comes to the opinion that there are no reasonable grounds for believing that the accusation against such person is prima facie true vide the proviso to Section 43-D (5), ibid.

15. We perused the statements of the witnesses, who have been so far examined by the State police and NIA, and also the seizures that were effected in these cases.

16. On a cumulative assessment of the available materials, it cannot be stated that there is no reasonable ground for believing that the accusation against the appellants is prima facie true.

In such view of the matter, these criminal appeals are dismissed as being devoid of merits.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Principal Sessions Judge,
   Kancheepuram District at Chengalpattu.

2. The Inspector of Police,
   Q-Branch CID,
   Chennai.

3. The Inspector of Police,
   National Investigation Agency,
   Chennai.

4. The National Investigation Agency,
   Chennai.

5. The Public Prosecutor,
   Madras High Court,
   Chennai - 600 104.

+1cc to Mr.G.Mohanakrishnan, Advocate, S.R.No.20104

CRL.A.NOS.114 & 145 OF 2022

SSD(CO)
PBS/05/04/2022