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CRL OP(MD). 1



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 19/07/2022

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL OP(MD). No.11163 of 2022

Nilavueen @ Nilavudeen

... Petitioner/Accused No.1

Vs

The State rep.by,
The Inspector of Police,
Athirampattinam,
Thanjavur District
(Crime No.91 of 2021)

... Respondent/Complainant

For Petitioner : Mr.S.Senthamilselvan
Advocate.

For Respondent : Mr.R.M.Anbunithi
Additional Public Prosecutor(Crl.side)

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-For Bail in Crime No.91 of 2021 on the file of the respondent police.

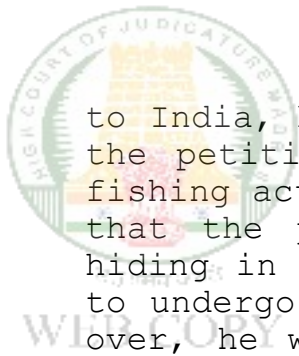
ORDER : The Court made the following order :-

The petitioner is facing charges under Sections 14(a), 14(b) of Foreigners Act r/w 212, 420, 465, 468 and 471 IPC, Section 17 of Citizenship Act, 1955 and Section 34 of Adhaar Act, 2016 in Crime No.91 of 2021 on the file of the respondent police.

2.The case of the prosecution in brief is as follows:-

3.The petitioner was arrested and remanded to judicial custody on 02.02.2021. After investigation, final report was filed and the same has been taken cognizance in CC.No.152 of 2021 by the trial Court. Seeking bail, this petition came to be filed on the ground that ever since from the date of arrest, the petitioner is in custody. He is ready to produce sureties to the satisfaction of the concerned trial Court.

4.According to the petitioner, he is an Indian by birth. For <https://www.themercisurprise.com> purpose, he went to Srilanka and in the year 2013, he came



to India, because of the trouble made in that area. The petitioner was also missing and ever since, he was doing the fishing activity in that area. It is seen that in 2005 also, finding that the petitioner is involved in fabrication of documents and hiding in India without proper passport and visa, he was sentenced to undergo 1 year imprisonment and after the period of sentence was over, he was released from the prison. A copy of the judgment is produced in CC.No.140 of 2009.

5.The petitioner admitted the guilt and accordingly, he was sentenced to undergo simple imprisonment of one year each for the offences punishable under Sections 465 and 468 IPC and for the Section 14 of Foreigners Act. The period of remand was set off. Finding that he is a Srilankan by citizen, he was directed to produce before the District Collector under Section 3 (2) (c) of Foreigners Act for further action. But what had happened after that is not clear on record. Again, he has been arrested and remanded to judicial custody in this matter.

6.Had the authorities complied with the order that has been passed by the concerned Magistrate in CC.No.140 of 2009, the matter would have been end there itself. When this bail application was moved, this Court also repeated the very same question to the learned counsel for the petitioner, even the respondent police was not in a position to inform the Court about the aforesaid development.

7.Detailed guidelines have also been issued by the Karnataka High Court in Crl.P.No.6578 of 2019 (**Babul Khan and another Vs. State of Karnataka and other**) dated 19.05.2020 as to how to deal about this sort of offences and situation.

8.The learned counsel for the petitioner would submit that if the petitioner is released on bail, he is ready to produce sureties to the satisfaction of the concerned Magistrate and is also ready to appear before the Board, which has been constituted by the Government under the Citizenship Amendment Act, 2019. The guidelines that have been issued by the Karnataka High Court may be reproduced for better understanding.

(1) As soon as the offence under *Foreigners Act* and other Laws is detected and there is a strong prima facie material to show that the detected person is a foreign national, and if he has no Passport or Visa, or if the Visa is expired, and he has no right to stay in Indian Territory, proceedings shall be immediately started to deport him to his nation, without unnecessary delay, from the date of registration of FIR against such person.



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(2) The jurisdictional police have to immediately take steps to inform the concerned competent authorities to initiate proceedings to deport such foreign national to his mother country visa-a-vis other competent authorities also share the details of such person amongst themselves and concerned jurisdictional Court.

(3) If the Court refuses to grant bail to those persons (foreign nationals) in any criminal case, the Court shall keep such person in regular jail, till the disposal of the case.

(4) If for any reason the Court grants bail including anticipatory bail, in any criminal case where the offender is a foreign national, and the offences are under the *Foreigners Act* and/or also under any other Laws for the time being in force, and their Visa is cancelled or lapsed, or they have no Passport, or they are illegal migrants, then the Courts shall specifically order to keep them in detention centers, unless the competent authority has passed any order under *section 3(2)(a) to (f) of Foreigners Act, 1946*, or till further orders of the court or till they are deported to their mother country.

(5) If the case registered against the foreign nationals, ended in conviction, they shall be ordered to be kept in regular prison of the State till they serve their sentence, and after serving the sentence, they shall be kept in detention centers till, they are deported to their country.

(6) If the case ends up in discharge, release of the accused or acquittal, and their nationality is in dispute before the competent Tribunal, they shall be ordered to be kept in detention centers till they are deported to their country unless they have any right or otherwise entitled to remain in India, or the competent authority has passed any orders under *section 3(2)(a) to (e) of Foreigners Act 1946*, the acquittal, discharge or release of the accused is no bar for the concerned competent authorities to question the nationality of that person before the competent Tribunal.

(7) The Public Prosecutors, the defence Counsel and the Courts shall make all their efforts to expeditiously deal with such cases by giving priority, for its early disposal, so as to enable other competent authorities to take appropriate steps under the facts and



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circumstances of each case for deportation of such foreign national (accused) as early as possible. The Court may also if permissible under law, and applicable to the facts and circumstances of a case may invoke [sections 265A to 265L](#) under chapter XXI (A) of Code of Criminal procedure, after following due procedure.

(8) As far as possible where a foreign national is involved in a case, the courts shall make their endeavor to record evidence and write the judgment in English Language, if the accused in such case is not conversant with the local language.

(9) The Central Government and the State Governments shall take all necessary steps to establish as many as necessary Detention Centers, at Cities, Districts and Taluka places as per the detention Center Manual referred to in this judgment, with all necessary basic facilities, as per the detention centre manual, as per the directions and guidelines of the Hon'ble Apex Court in the case of Upadhyaya Vs State of A.P. and others reported in (2017)15 SCC 337, so as to keep the foreign nationals, till their deportation whenever they are ordered to be kept in detention centers by competent authorities or by the Courts.

(10) In case, the accused/foreign national is a woman or a woman having a child or the child itself, the competent authorities, including jail authorities, detention centers, and the Courts and Juvenile Justice Boards have to follow the Guidelines of the Hon'ble Apex Court laid down in Upadhyaya's case noted supra; in addition to the provisions under the [Prisons Act](#) as well as Prisons Rules, and Juvenile Justice Act and Rules strictly and meticulously in their letter and spirit.

(11) If a mother who is a foreign national, is in custody and having infant below the age of six years or up to six years, the court may order the child to accompany the mother during her custody. If, either of parents got arrested, then the custody of the child may be given to the other parent who is not arrested. If both the parents are arrested and they are in custody in same or in some other case, court may order custody of children to their close relative or to Government shelter home, or to any other



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organization recognized or undertaking of the government where government or concerned authorities can monitor the well being of the child, as per Juvenile Justice (Care and Protection of Children) Act, 2015 and Rules.

(12) If a foreign national is convicted by the Court, and any application for parole is made, the jail authorities have to take in to consideration the conditions enumerated under Section 4 of the Foreigners Act, 1946, in addition to the Prisons Act and Rules.

(13) If a Foreign National is found to be an illegal migrant and not a citizen of India, and has been involved in criminal offences under other law of the land for the time being in force, apart from Foreigners Act, the State Government or the Central Government as the case may be, take immediate necessary steps by exercising their discretion after applying their mind to the facts and circumstances of the case, if necessary and if the circumstances warrants, if the said offences are not heinous or anti-social, or not punishable with imprisonment for more than three years, or with fine only to withdraw those cases under Section 321 of Cr.PC., so as to enable the concerned authorities to take necessary steps to deport such persons to their mother country, as expeditiously as possible.

(14) The State Legal Services Authority, District Legal services Authorities, and Taluka Legal Services Committees, shall make a periodical visit to the jails and Detention centers to ensure and satisfy itself that the concerned authorities have taken necessary steps to implement the directions issued by the Hon'ble Apex Court in Upadhyay's case and also the Detention Center Manual, so as to take appropriate action to inform the concerned authorities to rectify their mistakes and also the Legal Services Authorities suo-motu can take steps in accordance with law to get the mistakes or errors rectified on the legal side.

(15) The Central Government and the respective State Governments shall often revise the Detention Center Manual and also the Prisons Act and Rules based on the need of the hour to bring necessary changes, so as to effectively and efficiently implement the very object of such Manual and laws.



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(16) The Central Government, the State Government, the Karnataka State Legal Services Authority, Karnataka Judicial Academy and Police Academy in the State shall take appropriate necessary swift action to sensitize all the stake holders, Judges, Prosecutors, Police Officers, Custom and Immigration Officers (FRRO-FRO), Jail Authorities and Officers delegated in Detention Centers, in this regard.

9. However, the Karnataka High Court thought it fit to grant bail to the petitioner. Even though a plea has been raised by the learned counsel for the petitioner that the petitioner is also Indian National, so far no document has been produced. Since the petitioner has already undergone imprisonment for a similar offence, it may not be proper on the part of the Court to deny bail. But of course, he must be confined in the Special Camp in Trichy subject to the order to be passed by the concerned District Collector, till the disposal of the case as well as till the disposal of the proceedings as per the provisions of the Foreigners Act, as noted above.

10. In the light of the above, this Court is inclined to grant bail to the petitioner with certain conditions.

11. Accordingly, the petitioner is ordered to be released on bail, on executing a personal bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Pattukottai. The petitioner shall appear before the concerned Court. The petitioner must produce the sureties from the local area, from where he was doing the fishing activity to the satisfaction of the concerned Magistrate.

sd/-
19/07/2022

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20/07/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



TO

- 1 THE JUDICIAL MAGISTRATE,
PATTUKOTTAI.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
THANJAVUR DISTRICT AT KUMBAKONAM.
- 3 THE INSPECTOR OF POLICE
ATHIRAMPATTINAM, THANJAVUR DISTRICT.
- 4 THE SUPERINTENDENT,
PUZHAI CENTRAL PRISON, CHENNAI.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE DISTRICT COLLECTOR,
THANJAVUR DISTRICT.

ORDER

IN

CRL OP(MD) No.11163 of 2022

Date :19/07/2022

MM

MK/PN/SAR.I/20.07.2022/6P/7C