

“REPORTABLE”**IN THE SUPREME COURT OF INDIA****CRIMINAL APPELLATE JURISDICTION****SPECIAL LEAVE PETITION (CRL) NO.7532 OF 2012**

N. Kannapan

.... Petitioner

Versus

State (Union Territory) Andaman & Nicobar Islands

.... Respondent

WITH**SPECIAL LEAVE PETITION (CRL.) No.8286 of 2012**

R. Chidambaram

.... Petitioner

Versus

State (Union Territory) Andaman & Nicobar Islands

.... Respondent

WITH**SPECIAL LEAVE PETITION (CRL.) No.8730 of 2012**

Sanjay Choudhury

.... Petitioner

Versus

State (Union Territory) Andaman & Nicobar Islands

.... Respondent

WITH**SPECIAL LEAVE PETITION (CRL.) No.8876 of 2012**

S. Namochivayam (In Jail)

.... Petitioner

Versus

State (Union Territory) Andaman & Nicobar Islands

.... Respondent

J U D G M E N T

JAGDISH SINGH KHEHAR, J.

1. On a complaint made by H.L. Tiwari FIR No.546 was registered at Police Station CCS, Port Blair on 21.6.2011. The FIR and the action taken thereupon indicate, that a cargo ship (christianed, Gati Zipp) had set sail from Chennai and was to reach Port Blair on 20.6.2011. It was alleged, that the aforesaid cargo ship was carrying cartons shipped by VMR Shipping Agency. It was also alleged, that the cartons of VMR Shipping Agency contained unauthorized substances. At the time of the receipt of the information, the cargo ship was allegedly berthed at Haddo Jetty, Port Blair. Based on the said information recorded in the First Information Report, a raiding party comprising of one Inspector, one Sub-Inspector, two Head Constables, two Constables, one police driver (of the rank of Head Constable) and one official photographer was organized. On reaching Haddo Jetty the raiding party associated with itself, one Sub Inspector, three Head Constables and one Constable of the SB-CID staff stationed there. Two independent persons Nikhi Sakar, a Tally Clerk at Port Blair and Manoj Kumar were also associated with the raiding party.

2. The raiding party, having reached Haddo Jetty, started looking for the cartons/containers shipped by VMR Shipping Agency, which had arrived at Port Blair in Gati Zipp. The raiding party identified a container belonging to VMR Shipping Agency, which had been unloaded from the concerned cargo ship (Gati Zipp). The container in question, was further being loaded into a truck bearing registration no.AN-01E-1847. G..S. Babu

was supervising the loading operations of the aforesaid container. As per the declaration in the manifest list, the carton in question, contained four drums of grease. The four drums found in the container were photographed by the official photographer. The said drums were then checked in the presence of independent witnesses. The alleged contents of the four drums (revealed upon search by the raiding party) are being summarized hereunder:

- i) First drum: Three packets of grease, 406 pieces of gelatine sticks and 122 bundles of electronic detonators (each bundle containing 25 detonators, i.e., in all 3000 detonators).
- ii) Second drum: 405 gelatine sticks and 120 bundles of electronic detonators (in all 3000 detonators)
- iii) Third drum: 823 gelatine sticks
- iv) Fourth drum: 823 gelatine sticks.

The drums as well as the explosive substances recovered from the drums, were counted and seized, in the presence of independent witnesses. Before that, five gelatine sticks were taken from the first drum and secured in a separate packet for chemical analysis. Likewise, five electronic detonators were taken from the first drum and secured in a separate packet for chemical examination. The person who was supervising the reloading of the container into the truck bearing registration no. AN-01E-1847 allegedly identified himself as G.S. Babu. He also disclosed, that he was employed as Manager by VMR Shipping Agency.

3. With the assistance of G.S. Babu, and in the presence of the official photographer and the independent witnesses, the raiding party allegedly identified another container belonging to VMR Shipping Agency. The said

carton/container had also been off-loaded from Gati Zipp. As per its declaration in the manifest list, the second carton, contained salt. The aforesaid container was also opened in the presence of independent witnesses. It was found, that the contents of the instant container were enclosed in a large plastic bag. The large plastic bag in turn contained smaller plastic bags. The small plastic bags had the inscription "imported coated drilled ammonium nitrate" and "net weight 50 kilograms" printed on them. 200 such small bags were allegedly found in the second container. The official photographer also clicked photographs of the contents of the second container. The aforesaid bags contained in all, 10,000 kgs of ammonium nitrate. The aforesaid ammonium nitrate was taken into possession. Two samples of the contents of the small bags, weighing 50 grams each, were taken for chemical analysis.

4. Based on the recovery of the aforesaid explosive substances, further investigations were carried out. These investigations allegedly revealed inter alia, the names of the petitioners before this Court. Consequent upon the discovery of the petitioners involvement with the consignment of unauthorized explosive substances, they were arrested. Applications filed by the petitioners for bail remained unsuccessful. The impugned orders in these petitions is the last such unsuccessful attempt, made on behalf of the petitioners. It is therefore, that the petitioners are now before us, praying for bail.

5. In order to support their claim for release on bail, it was the vehement contention of the learned counsel for S. Namochivayama (petitioner in SLP (Crl.) no.8876 of 2012), that the petitioner runs a grocery

shop, and cannot be associated with the allegations narrated in the First Information Report, as also, the alleged recovery of explosive substances.

6. In so far as N. Kannapan, R. Chidambaram and Sanjay Choudhary [petitioners in SLP (Crl.) no. 7532 of 2012, SLP(Crl.) no. 8286 of 2012, and SLP (Crl.) no. 8730 of 2012, respectively] are concerned, the principal submission is, that they are all genuine quarry operators, possessing valid licences for carrying out quarrying operations. They are officially issued explosives by the Andaman Public Works Department, which they use for extraction of boulders from their respective quarries, over which they have valid licences. Their contention in nutshell is, that the action of the petitioners in possessing and using explosive substances is legal and legitimate. As such, the aforesaid three petitioners contend, that they are not involved in any unauthorized activity. All the petitioners therefore pray for their release on bail.

7. In support of their prayer for bail, it was pointed out, that the First Information Report in this case was registered as far back as on 21.6.2011, the first chargesheet in the case was filed on 24.8.2011. Thereafter, three supplementary chargesheets were filed on 30.1.2012, 10.4.2012 and 7.7.2012. It was the pointed submission of all learned counsel, that based on the successive filing of the supplementary charge-sheets, their detention in jail was being unduly and intentionally prolonged, for extraneous considerations. It was also pointed out by the learned counsel for the petitioners, that all the petitioners have already been in jail for periods exceeding one year and, as such, they should be extended the concession of bail.

8. It was also the contention of the learned counsel for the petitioners, that the confiscated explosive materials, even according to the contents of the First Information Report, and the three chargesheets referred to above, were admittedly being used for quarrying operations. It was submitted, that there is no allegation against any of the accused, that the contraband detained in Port Blair was for use in any terrorist or like activity/activities. It was submitted, that keeping in mind the tenor of the insinuations contained in the First Information Report, as also, the allegations contained in the chargesheets, the petitioners should not be dealt with as if they are terrorists or are associated with terrorists.

9. Additionally, it was the contention on behalf of all the petitioners, that no explosive materials were recovered from the premises of any of the petitioners, and accordingly, none of the petitioners could be associated with the recovery of explosives allegedly made from the shipping yard at Port Blair. It was submitted, that the petitioners have been detained, only on the basis of telephone conversations, and deposit of cash in bank accounts, which have no nexus with the recoveries of explosives made at Port Blair.

10. We shall endeavour to deal with the pointed allegations levelled against each of the petitioners hereinafter. We shall deal with the petitioners, in the same sequence, in which submissions on their behalf, were addressed at the Bar.

11. First and foremost, the allegations against S. Namochivayama (petitioner in SLP (Crl.) no.8876 of 2012). According to learned counsel representing the respondent state, G.S. Babu who was arrested when the

contraband was recovered at Haddo Jetty, Port Blair, as also, the driver Pankriacius Ekka (of the vehicle bearing registration No.AN-01E-1847) revealed, that the bags (200 bags) of ammonium nitrate seized by the raiding party on 21.6.2011, were booked in the name of M/s.Karpaga Vinagar Stores, whose proprietor is the petitioner S. Namochivayama. The investigations conducted by the police also revealed, that consignments of ammonium nitrate used to be distributed by S. Namochivayama, to the other co-accused, who are involved in quarrying operations. Even the driver, named above, had expressly indicated, that it was at the directions of the petitioner S. Namochivayama, that he had gone to Haddo Jetty, Port Blair, for collecting the consignment under reference. According to the evidence allegedly collected by the investigating agency, Muthuraja and Sadasivam are the proprietors of VMR Shipping Agency. They were responsible for shipping the containers from Chennai to Port Blair. Both the aforesaid Muthuraja and Sadasivam are related to the petitioner S. Namochivayama. It is also the case of the prosecution, that another accused Raghavan, also a consignee of the gelatine sticks and detonators, was related to petitioner S. Namochivayama. It is also asserted by the learned counsel for the respondents, that the evidence collected by the investigating agency clearly demonstrates the involvement of the petitioner S. Namochivayama, inasmuch as, the instant consignment was not a stray incident. The petitioner S. Namochivayama is believed to have been indulging in such activities in the ordinary course of his business. In view of the petitioner S. Namochivayama being the distributor of ammonium nitrate, gelatine sticks and electronic detonators at Port Blair, he was

perceived as the kingpin of the alleged activity, at Port Blair. And therefore, a prime accused in the alleged conspiracy. Finally, it was the contention of the learned counsel for the respondents, that procurement of explosives of the nature in question (which were recovered by the police party on 21.6.2011), and their unauthorized sale and use, is a matter of serious concern, not only for environmental purpose, but also for national security. It was pointed out, that explosives of the nature recovered at Port Blair on 21.6.2011, can easily be used for other allied unauthorized purposes, with disastrous consequences.

12. The name of N. Kannapan (petitioner in SLP (Crl.) no.7532 of 2012), allegedly came to light, from the statement of witnesses recorded under Section 164 of the Code of Criminal Procedure. According to the statement of Magesh, the petitioner N. Kannapan had paid a sum of Rs.3,20,000/- to him. The aforesaid amount was deposited by the aforestated Magesh in the account of Selvam. The bank account of Selvam affirmed the truthfulness of the aforesaid assertion. Call details reveal, regular conversation between the petitioner N. Kannapan and Selvam, which establishes their relationship. N. Kannapan was also found to be associated in the matter, as Shanmugam in his statement under Section 164 of the Code of Criminal Procedure affirmed, that the petitioner N. Kanappan was using ammonium nitrate for quarrying operations. In this behalf it was pointed out, that the Andaman Public Works Department had not issued any ammonium nitrate to N. Kannapan, but the investigation revealed, that he was using the same for quarrying purposes, at his own quarry. It was also submitted, that the findings of the forensic science

laboratory indicate, that the seized goods were “special category explosive substances”, and as such, the petitioner N. Kannapan had actually used such explosive substances, without due authorization in quarrying operations, and was liable for infringement of the provisions under the Explosive Substances Act, 1908. It was also contended, that the explosive substances under reference, were brought in a ship in a clandestine manner. In this behalf it was pointed out, that in the declaration manifest of one of the cartons, the gelatine sticks and the electronic detonators were described as grease. The other container with ammonium nitrate, was described as salt (in the declaration manifest relating thereto). It was submitted, that if the intentions of the petitioner N. Kannapan, were bonafide and genuine, there was no reason for clandestine transportation of the seized explosives from Chennai to Port Blair. The explosives in question, according to the learned counsel for the respondents, could be used for extraneous considerations, and had the potential of a massive disaster, not only to life but also to property, on the Andaman or neighbouring islands. It was also pointed out, that the petitioner N. Kannapan had a regular relationship with the other co-accused in the transaction. The aforesaid relationship was allegedly established from call data registers, depicting a relationship between the petitioner N. Kannapan and the other co-accused.

13. R. Chidambaram (petitioner in SLP (Crl.)no.8286 of 2012) is admittedly a quarry operator. For quarrying operations, he is admittedly in possession of a valid quarry licence. He was issued 15 kgs. of gelatine sticks and 60 detonators for quarrying operations by the Andaman Public

Works Department. According to the inferences drawn, from expert opinion sought on the issue, it had emerged, that the gelatine sticks and detonators officially issued to the petitioner R. Chidambaram, would result in excavation of 450 metric tonnes of boulders, whereas, the petitioner R. Chidambaram is stated to have extracted 1590 metric tonnes of boulders. This, according to learned counsel, was evident from the transport permits used by R. Chidambaram, for transportation of the boulders. According to the learned counsel for the respondents, the boulders excavated by petitioner R. Chidambaram, were three folds more than what he could have, by using the explosives issued to him by the Andaman Public Works Department. It was also the contention of the learned counsel for the respondents, that the petitioner R. Chidambaram was using ammonium nitrate for quarrying activities, in the area over which he had a lease. It is pointed out, that R. Chidambaram was not issued any ammonium nitrate by the concerned authority. It is further submitted, that the statements of Armugam, Ganeshan, Sashi, Shanmugam, Mageshwaram and Karupaiah, recorded under Section 164 of the Code of Criminal Procedure, also revealed, the involvement of petitioner R. Chidambaram in the procurement of illegal explosive substances, and of their use in his quarrying activities. It was also submitted, that the aforesaid Mageshwaram, during the course of his statement recorded under Section 164 Cr.P.C. had stated, that he (Mageshwaram) used to collect money from the petitioner R. Chidambaram, and used to deposit the same in the account of Selvam. It is therefore submitted, that the involvement of

petitioner R. Chidambaram is based on concrete and unrefutable evidence.

14. In the case of Sanjay Choudhary (petitioner in SLP (Crl.) no.8730 of 2010), it was submitted by the learned counsel for the respondents, that his (of Sanjay Choudhary) position, was exactly the same as that of R. Chidambaram, and as such, the factual position projected in the case of R. Chidambaram, should be considered as against Sanjay Choudhary as well. It is pointed out, that the said similarity is on the following aspects. The money collected by Nagesh and deposited in Selvam's account. The use of ammonium nitrate without allotment of the same by the competent authority. The statements of Shamugam, Ganesh and Sashi under Section 164 Cr.P.C. And the fact, that although he was allotted only 15 kgs. of gelatine sticks and 60 electronic detonators, which could at best result in excavation of 450 metric tonnes of boulders; he was found to have extracted and transported 1905 metric tonnes of boulders, i.e., more than four times the amount which he could have excavated on the basis of the allotted explosives.

15. Having considered the assertions made at the hands of the rival parties, we are satisfied, that there is prima facie material, to establish the involvement of the petitioners in activities violating the provisions of the Explosive Substances Act, 1908. The consequences of such violation are extremely serious. The minimum punishment on conviction, is 10 years rigorous imprisonment. For more serious activities, the punishment can extend to imprisonment for life, and with death penalty. In the pleadings, and during the course of hearing, we were informed, that some of the

accused are still absconding. Obviously all the accused are financially well placed. Releasing them from jail at the present juncture, when the prosecution has not even commenced to examine the main witnesses, could prove detrimental to the eventual outcome of the trial. Atleast till the culmination of the evidence of the material witnesses, it is not proper to order the release of the petitioners on bail. In the facts and circumstances noticed hereinabove, we hereby decline the prayer for bail made by the petitioners. The impugned orders passed by the High Court are accordingly affirmed.

16. Having disposed of the matter in the manner expressed hereinabove, we consider it just and appropriate to direct the prosecution to first examine the material witnesses. It shall be open to the petitioner(s) to move a fresh application for bail, after the examination of all the material witnesses. Observations made in the instant order, on the merits of the controversy, shall not prejudice any of the parties during the course of the trial or thereafter.

17. Disposed of in the aforesaid terms.

.....J.
(Dr. B.S. Chauhan)

.....J.
(Jagdish Singh Khehar)

New Delhi;
January 3, 2013.