

(1996) 08 MAD CK 0062
In the Madras High Court
Case No : Criminal O.P. No. 4996 of 1996

N. Sasikala

APPELLANT

Vs

Enforcement Officer, Enforcement Directorate, Madras

RESPONDENT

Date of Decision : 05-08-1996

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 35, 68, 8, 9

Citation : (1997) CriLJ 2127

Hon'ble Judges : C. Shivappa, J

Bench : Single Bench

Advocate : R. Jain, for M/s B. Kumar and R. Loganathan, for the Appellant; K. Kumar, Spl. Public Prosecutor (FERA), for the Respondent

Judgement

1. The petitioner herein is seeking for her release on bail, after dismissal of her petition for a similar prayer by the learned Principal Sessions Judge,

Madras.

2. The material facts, which gave rise to indictment, are these :-

The petitioner has been remanded to judicial custody for the alleged non-bailable offence under Sections 8(1), 9(1)(a) and 9(1)(c) read with

Section 68 of the Foreign Exchange Regulation Act, 1973, hereinafter referred to as "the Act", in short. She was summoned to appear before the

Enforcement Department on 20-6-1996 and later after questioning arrested and produced before the Magistrate and remanded to Judicial

Custody. The case of the respondent is that she was a Director and Chair Person of the Company called J.J.T.V. Private Limited and she has

participated and signed in a meeting, which authorised the Managing Director of J.J.T.V. Private Limited, namely, Mr. V. Bhaskaran to negotiate

and enter into a contract with any Foreign supplier with Transpounder facility for

a Satellite T.V. Channel, which the Company proposed to launch.

Mr. V. Bhaskaran had sent a FAX to one Ramachandran of Singapore requesting for supply of camera and other goods to the Company for

which the petitioner had concurred. It is also stated that certain monies in foreign exchange was paid by one Raju of Malaysia to the Company

Rimsat"" of America and ""Subic Bay"" of Singapore for the purpose of satellite transponder facilities. In pursuance of the said deliberation Mr.

Bhaskaran went to Phillipines and after discussion, sent a Fax message on 15-12-1994. to the petitioner about the arrangement and also about the

off (sic) the record payment. The letter dated 15-12-1994 from the Company addressed to Ramachandran of Singapore regarding import of

spares of Singapore \$ 1,36,000/- in which Mr. Bhaskaran has specifically mentioned about the discussion with ""Chinnamma"" and also instructions

given by her, which showed that she consented for payment for the goods, as no official payment made for this purchase. The charges against her

are under Ss. 8(1) and 9(1)(c) read with Section 68(2) of the Act to the extent of U.S. \$ 6,80,000/- and secondly u/S. 9(1)(a) read with Section

68(2) of the Act in respect of Singapore \$ 1,36,000/-. In addition, during the course of investigation, it appeared that the petitioner herself may

have arranged to remit foreign exchange from Penang in the name of R. Suseela in NR NR Rupees Deposits for Rs. 3,29 crores with the Indian

Bank, Adhiramapuram Branch, Madras, against which a loan of Rs. 3,00,00,000/- was taken in the name of M/s. Bharani Bench Resorts. It is

alleged that there were non resident non-repatriable rupee deposits to the tune of Rs. 3.20 crores with Indian Bank, Abhiramapuram, Madras in

the name of one Suseela of Penang. A company by name Bharani Bench Resorts Private Limited took a loan of Rs. 3. crores against the security

of the said deposits. Subsequently, the said Non-Resident Non-Repatriable Deposits were foreclosed, after adjusting the loan amount. The loan

taken by Bharani Bench Resorts Private Limited has been lent out to ten Companies in which the petitioner has interest and these Companies in

turn have lent Rs. 2.20 crores to the petitioner, which was utilised for making part payment for the purchase of Tea Estate purchased in Kothagiri.

The respondent suspects that the funds remitted by Smt. R. Suseela are the funds of the petitioner. Otherwise, immediately after taking the loan,

the said deposits would not have been foreclosed. It is the case of the Department that she has been actively taking part in the activities of the Company as Chair Person or Director and the materials disclosed coupled with her explanations as well as other circumstances reveal that she did convey her consent to those unauthorised transactions. It is also contended that the accusations against her are based on sound evidence on record. It is also specifically submitted that she is charged u/s 68(2) only and not u/s 68(1). It is further submitted that the Company did import the goods in question for Singapore \$ 1,36,000/- and the petitioner did convey her consent to the same and the consequent payment thereof. The charge is not for the import but for the payment to the supplier which has not been made through normal authorised banking channels. Hence, the charge u/s 9(1)(a) of the Act against the Company and the petitioner is charged u/s 68(2) of the Act for that offence.

3. The learned senior counsel appearing for the petitioner raised the following contentions :-

(1) Accused identically placed since released, consistency requires that the petitioner also should be released on bail; (2) She was in-charge of and was responsible to the Company for the conduct of the business of the Company and she was only a Chairperson since she happened to be the elder member of the family and as such there is no material to make her vicariously liable; and (3) Though he contended that as a lady she is entitled for bail; subsequently confined his argument that in the event of release, there will be no likelihood of fleeing from justice or tampering with the witnesses. In the event of such apprehension, severe conditions can be imposed to prevent such acts and urged that the arrest is without justification.

4. In support of his contention that an accused similarly placed has already been released on bail and on account of desirability of consistency and equity, petitioner is entitled for bail; he relied on a decision of the Allahabad High Court in Nanha Vs. State of U.P., and that of the Delhi High Court in Binoy Jacob Vs. Central Bureau of Investigation, , and urged that judicial consistency is a sound principle and it cannot be thrown to the winds by the individual view of the Judges and discretion cannot be arbitrarily exercised. It is the specific stand of the respondent that the case of

the petitioner with that of Mr. Bhaskaran is not identical. The charge against the petitioner is independent and made out u/s 68(2) of the FERA

Act, 1973. Apart from that, funds remitted by Smt. Suseela are the funds of the petitioner because the deposits made in the name of Smt. Suseela

were foreclosed immediately after taking the loan and utilised for Kodanadu Tea Estate and as such Mr. Bhaskaran is not the co-accused. The

nature of accusation on the availability of material, according to the Investigating agency, is not similar to that of Mr. Bhaskaran. Therefore, these

two decisions have no application. They are applicable only when the allegations are identical. Since the charge being independent, attendant

circumstances being different and the deposits made to purchase a Tea Estate, all these circumstances make a difference between the case of the

petitioner and that of Mr. Bhaskaran and hence, the release of another accused Mr. Bhaskaran need not be the sole criteria to grant bail to the

petitioner herein.

5. Regarding the second contention that she was not in charge of and she was not responsible to the affairs of the Company, the learned counsel

relied on the decision in Sham Sunder and Others Vs. State of Haryana, and contended that more often it is common that some of the partners of a

firm may not even be knowing of what is going on day to day in the firm and there may be sleeping partners who are not required to take part in

the business of the firm and there may be ladies and minors who are admitted for the benefit of partnership. He also contended that merely because

she signed in one meeting as Chairperson or she attested the signature of Mr. V. Bhaskaran is absolutely insufficient to make her vicariously liable,

when admittedly another person was in day to day management of the company. In essence, this decision will have an application, if the offence

alleged was committed without the knowledge of such partner or that such person exercised all due diligence to prevent such offence. The requisite

condition is that the partner should be in-charge of or responsible for carrying on the business during the relevant time. In the instant case, the

circumstances under which transaction took place and the consent of the petitioner and taking the benefit by way of purchase of the Tea Estate, all

show that she was not a mere partner without any knowledge of the day to day transaction of the firm. It is the case of the Department that she has

been actively taking part in the activities of the Company and materials disclosed coupled with her explanation and other circumstances reveal that she did convey her consent to those unauthorised transactions. If a person who has committed contravention, who at the time the contravention was committed, was in-charge of, and was responsible to, the Company for the conduct of the business is guilty of the contravention and liable to be proceeded against. And when there is any material that the contravention has taken place with the consent or connivance of, or was attributable to the partner/petitioner and when the material is still in the realm of investigation, prima facie it cannot be concluded that she never had overall control of the day to day business of the Company, so long her approval was taken to finalise the deal; that indicates the element of control she had to at the relevant time and the decision cited by the learned counsel in support of this contention is not applicable to the case on hand and hence, the second contention is liable to be rejected.

6. The learned counsel mainly concentrated on the third contention that there is no likelihood of fleeing from justice or tampering with the witnesses and urged that there must be a justification for the arrest apart from the power to do so. In support of his contention, he relied on a decision in *Joginder Kumar Vs. State of U.P. and others*, . The Apex Court has held that the existence of power to arrest is one thing and the justification for the exercise of it is quite another and the police officer must be able to justify the arrest apart from his power to do so. This observation of the Apex Court is on the ground that arrest and detention in Police lock-up of a person can cause incalculable harm to the reputation and self-esteem of that person. The object is to prevent arrest in a routine manner on a mere allegation of commission of an offence made against a person. But, wherever there is a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and reasonable belief both as to the person's complicity and even so as to the need to effect arrest, in such instances, it cannot be termed as one without reasonable justification. In the instant case, having regard to the complicity of the crime alleged against the petitioner, keeping in view of the stage of investigation, it cannot be said that the arrest is without need or justification. Therefore, the decision cited viz., *Joginder Kumar Vs. State of U.P.*

and others, has no application to the case on hand.

7. Regarding the aspect of likelihood of tampering and feeling from justice, it is always proper to keep in mind the cumulative effect of all the

circumstances involved in the case. But, it is also proper to keep in mind the caution by the Apex Court in *Niranjan Singh and Another Vs.*

Prabhakar Rajaram Kharote and Others, that while deciding the bail application, examination of the evidence and elaborate documentation of the

merits of the case should be avoided, because no party should have the impression that his/her case has been prejudged or prejudiced. To be

satisfied about a prima facie case is needed but not the exhaustive exploration of the merits. In this context, it is proper to refer the case decided by

the Apex Court in *State of Gujarat Vs. Mohanlal Jitmalji Porwal and Another*, . The Apex Court has held :-

The cause of the Community deserves equal treatment at the hands of the Court in the discharge of its judicial functions. The Community or the

State is not a persona non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin

the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic

offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A

disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to

administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye

unmindful of the damage done to the National Economy and National Interest.

This is only to note the degree of care to be exercised while deciding the application for bail who is charged with heinous offence touching the

economy of the Nation.

8. In *Haji Abdulla Haji Ibrahim Mandhra Vs. State of Gujarat*, , the High Court of Gujarat has also taken the view, where the accused are

involved in the offence being a serious economic offence which will ultimately ruin the economy and break the back-bones of the country, merely

because the accused or one of them particularly, is a leading personality, would not be a ground for the Court to release such person on bail. In the

eye of law, all the accused persons are the same whether they are rich or poor or having high status in society or in any field as a matter of fact.

The Nation is greater than the individual. When such an individual is alleged to have been involved in a serious offence which is against the Nation,

then release of such person on bail is not proper. In the instant case, facts show that investigation did suffer and suffering as the person so

summoned did not appear and join the investigation at the relevant time. The investigation has to take place both in India and abroad. Considering

the seriousness, gravity and magnitude of the contravention, and the time consumed so far for investigation, keeping in view the business of the

Companies involved both in India and abroad, if released, there is every possibility to unsettle the existing situation, which may cause obstacle for

further investigation. I have gone through the files submitted by the respondent. But, it is not appropriate to refer certain materials, since they are

crucial stages to be probed. But the files show several witnesses are yet to be examined and investigation has to be conducted even abroad

regarding the source of funds, which is in progress. Therefore, I see no justification in the contention that there will be no hampering or tampering of

investigation in the event of release.

9. It has been held by the Supreme Court in Directorate of Enforcement Vs. Deepak Mahajan and another, that the person accused under FERA

is assimilated with the characteristics of an accused within the range of Section 167(1) and as such liable to be detained u/s 167(2) by a Magistrate

when produced before him. Since these provisions are squarely applicable to persons arrested under provisions of Section 35 of the FERA, the

respondents are empowered to continue the investigation of the offences alleged against the petitioner within the statutory period. I see no

justification in the facts and circumstances of the case to grant bail even before the expiry of the statutory period as has been contemplated with

reference to the offences alleged against the petitioner.

10. For the reasons stated above, the petition is liable to be dismissed and accordingly it is dismissed. Any opinion expressed in this order is for the

purpose of disposal of this application. The trial Court uninfluenced by the observations to deal with the case in accordance with law.

11. Petition dismissed.