(1997) 01 MAD CK 0003

In the Madras High Court

Case No : Criminal O.P. No. 182/97

V. Bhaskaran APPELLANT

Vs

The Enforcement Officer, Enforcement Directorate, Shastri Bhavan, Madras 6 RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Citation : (1997) 1 LW(Cri) 299

Hon'ble Judges : Rengasamy, J

Bench : Single Bench

Advocate : B. Kumar, for the Appellant; K. Kumar, Special Public Prosecutor (FERA), for the Respondent

Judgement

Rengasamy, J.—The Petitioner, who has been arrested on 2.12.1996 for the alleged offence u/s 8(1) read with Section 68(1) of the Foreign

Exchange Regulation Act and is in custody till now, seeks for his release on bail.

2. In the petition, it is stated that he was the Managing Director of J. Jay T.V. Pvt. Ltd., and has closed the business on 30.6.96 and that he has

been falsely implicated for the alleged offence as though he obtained foreign satellite facilities for telecasting, without Reserve Bank of India''s

permission. He would further allege that he was arrested for the same offence on 29.1.1995 but was released after 45 days on bail. But he was

rearrested on 20.9.1996 under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), but the

detention was set aside by the Central Advisory Board, COFEPOSA, that soon after his release from detention, the Respondent has made second

arrest in R.R. No. 138 of 1996 alleging that J. Jay T.V. Pvt. Ltd., had made payments to satellite company from February 1996 to June, 1996.

The Petitioner would further allege that the pattern adopted by the Department making repeated arrest on a matter, which was to their knowledge

shows that it was mala fide and that only to frustrate the order of release from detention passed by the Central Advisory Board, this arrest was

made, that the second arrest is invalid as the alleged violation for the second arrest cannot be a separate transaction and there is unity of object and

continuity of action and the satellite T.V. requisitions are one and the same. He would submit that he would not abuse his liberty if released on bail

and the investigation also must have been completed as already the statement of Ramachandran of Singapore has been recorded even on

11.11.1996.

3. The Respondent Enforcement Directorate has filed the counter opposing the release of the Petitioner on bail. In the counter, it is stated that the

intelligence report reveals that J. Jay T.V. Pvt. Ltd., of which the Petitioner was the Managing Director, had acquired foreign exchange

unauthorisedly for making payments to M/s. Intersputnik, Moscow, towards transponder hiring charges and to M/s. Singapore Telecom,

Singapore, for securing uplinking facilities for telecasting programme of M/s. J. Jay T.V. Pvt. Ltd. that the investigation further revealed that J. Jay

T.V. had effected payments through Appoffezz Point Pvt. Ltd., Singapore, to the tune of Singapore $ 5,66,160/- to M/s. Intersputnik, Moscow,

towards transponder hire changes for the period from February, 1996 to may, 1996 and payments totalling to Singapore $ 49,000 to M/s.

Singapore Telecom, Singapore, towards the uplinking facilities for the months of April and May, 1996 and that it also came to light that during the

period from January 1996 to August, 1996, in all, Singapore $ 10,45,000/- were remitted by way of cash into the account of M/s. Appoffezz

Point Pvt., Ltd., maintained with United Overseas Bank Limited, Singapore and these amounts illegally acquired and clandestinely transferred by

the Petitioner. They further add that the arrest of the Petitioner is not for the reason that the detention was set side by the Central Advisory Board,

but the investigation relating to the violation for the period between February, 1996 to June 1996 started much earlier to the date of revocation of

detention by the Central Advisory Board, that the Petitioner, while in detention, was enquired inside the Central Prison, Palayamcottai, with permission of the Court but the Petitioner refused to give statement in writing and thereafter on 3.12.1996 with permission of the Court, he was

formally arrested u/s 35 of the Act for the contravention of the abovesaid provisions. The first arrest relates to the offences for hiring in transponder

uplinking facility with M/s. Subic Bay, Philippines, for payment of US $ 5,00,000/- to M/s. Rimsat, U.S.A. and US $ 1,80,000 to Subic Bay, and

the period of contravention was during December, 1994 to April, 1995, but the second arrest is for the contravention during February, 1996 to

May 1996 for availing transponder facility from M/s. Inter Sputnik, Moscow, and uplinking facilities from Singapore Telecom, Singapore, and for

payment of Singapore $ 5,66,160 to M/s. Intersputnik and Singapore $ 49,000 to M/s. Singapore Telecom, Singapore. They further add that the

violation of the foreign exchange has come to light when one K. Ramachandran has given statements on 11.11.1996 and 12.11.1996 with regard

to the aforesaid payments and some more details are awaited from Singapore from various persons and investigation so far conducted, would

reveal illicit acquisition and transfer of funds to the tune of US $ 10,45,000 on behalf of J. Jay T.V. Pvt., Ltd., for making remittance into the

accounts of Appoffezz Point P. Ltd., Singapore for hiring and uplinking facilities and in order to collect more details, further enquiry has to be

conducted. Another ground raised is that Smt. N. Sasikala, chairperson of J. Jay T.V. Pvt., Ltd., also was arrested by the Enforcement

Directorate for the very same offence and this Court had dismissed her petition for bail on 24.12.1996, that the Supreme Court also has dismissed

her SLP only on 13.1.1997 and there is nothing to discern for this Petitioner as he and Smt. N. Sasikala were involved in the same offence and

there is no change of circumstance now for releasing the Petitioner on bail when the investigation is not yet over. It is also stated that considering

the seriousness, gravity and magnitude of the violation, it is very likely that the witnesses might be tampered with and the Petitioner may put spokes

in the wheels of the investigation and hamper the progress and investigation and therefore, he may not be released on bail.

4. The short point for consideration is whether the Petitioner deserves to be released on bail at this stage.

5. Even though it is alleged in the petition that the arrest is mala fide for the reason that he was previously arrested on 21.9.1996. and was released

on bail after 45 days, that the alleged violation during February, 1996 to January, 1997 must have been part of the same transaction for which he

was previously arrested on 21.9.1996, that the Respondent must have had knowledge about the alleged violation from February, 1996 to June,

1996 and only to frustrate the release after the revocation of the detention, the second arrest has been effected, these allegations have not been

very much stressed before me by the learned Counsel Mr. B. Kumar, appearing for the Petitioner. The first arrest relates to the violations of

foreign exchange in the agreement between M/s. J. Jay T.V. Pvt., Ltd., and M/s. Rimsat, U.S.A. for hiring transponder and for uplinking facility

with Subic Bay, Philipines, by paying US $ 5,00,000 to Rimsat and US $ 1,80,000 to Subic Bay and other violation connected with that

transaction for the period from December, 1994 to April, 1995. The Respondent would submit that the present arrest is related to the violation

during the period from February, 1996 to May, 1996 which came to light only subsequently as M/s. J. Jay T.V. had availed the transponder

facility from Intersputnik an uplinking facility from Singapore Telecom, Singapore, on payment of US $ 5,66,160 and US $ 49,000 to the

abovementioned companies, Therefore, certainly this alleged transaction is distinct from the previous violation and as this being a new fact that

came to light to the Respondent Enforcement Directorate. Naturally, they had to arrest the Petitioner though his detention was revoked by the

Central Advisory Board on certain grounds. Probably, on account of this fact, the learned Counsel Mr. B. Kumar did not very much rely upon that

ground to seek release of the Petitioner. But he very much stressed upon the liberty of the citizen guaranteed under the Constitution and according

to Mr. B. Kumar the Petitioner was arrested on 2.12.1996 and is in custody for more than 45 days now and under the guise of investigation, the

custody of an individual, even if legal, cannot be endlessly prolonged as it offends Articles 21 and 22 of the Constitution and even if the

investigation is not completed, sufficient safeguards might be provided from interference with the investigation and release the Petitioner on bail so

that his liberty would not be curtailed. In this connection, the learned Counsel for the Petitioner cited two decisions, viz., Joginder Kumar Vs. State

of U.P. and others, and D.K. Basu Vs. State of West Bengal, In the first case, a petition was filed under Article 32 of the Constitution of the release of the Petitioner, who was alleged to be in illegal custody. The Petitioner was taken to the office of the Senior Superintendent of Police,

Ghaziabad, on 7.1.1994 for certain enquiry and thereafter, he did not come back to the house. It came to be known to the brother of the

Petitioner on 9.1.1994 that the Petitioner was taken to some undisclosed destination. Therefore, the petition was filed for the release of the

Petitioner on 11.1.1994. The Senior Superintendent of Police, who appeared before the Court on 14.1.1994, represented to the Court that the

Petitioner was released and when he was questioned as to why the Petitioner was detained for five days the Senior Superintendent of Police

informed the Court that the Petitioner was not detained at all but as his help was taken for detecting some cases relating to abduction and the

Petitioner was helpful in cooperating with the police, he did not come home for five days. The Petitioner therein was detained by the police for five

days and as the police had replied that he was not detained but his help was sought for by the police, the Supreme Court, dissatisfied with the

manner in which the liberty of an individual was curtailed, has set out the principles for the arrest of a person. After discussing the position in

U.S.A. and England regarding arrest and also discussing the report of the National Police Commission, in paragraph 24, the Supreme Court gives

direction that under what circumstances, a person can be arrested depriving his constitutional right of liberty.

The Supreme Court observes as follows:

The above guidelines are merely incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is lawful

for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another The Police

Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable

harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence

made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his

own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person''s complicity and even so as to the need to effect arrest. Denying a person of his liberty

is a serious matter. The recommendations of the police commission merely reflect the constitutional concomitants of the fundamental right to

personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable

justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be

avoided if a Police Officer issues notice to person to attend the Station House and not to leave Station without permission would do.

Therefore, this decision deals with the question of necessity for the arrest of a person. In paragraph 9, their Lordships would observe:

A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one

hand, and individual duties, obligations and responsibilities on the other of weighing and balancing the rights, liberties and privileges of the single

individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which

comes first - the criminal - or society, the law violator or the law abider; of meeting the challenge which Mr. Justice Cardozo so forthrightly met

when he wrestled with a similar task of balancing individual rights against society''s rights and wisely held that the exclusion rule was bad law, that

society came first, and that the criminal should not go free because the constable blundered. In People v. Defore 242 N.Y. 13, 24, 150, N.E. 585,

(1926) JCO 589 :

The question is whether protection for the individual would not be glared at a disproportionate loss of protection for society. On the one side is the

social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in

any choice. The rule of the Adams case (People v. Adams 176 N.Y. 351, 68, 351, 68 N.E. 636 (1903) strikes a balance between opposing

interests. We must hold it to be the law until those organs of government by which a change of public policy is normally effected shall give notice to

the Courts that change has come to pass.

6. The learned Counsel Mr. B. Kumar would submit that the Supreme Court in the

above decision has referred to the parameters given by the

National Police Commission for arrest and detention of a person and the conditions for the arrest are, (1) the case involves a grave offence like

murder, dacoity, robbery, rape etc., and it is necessary to arrest and bring these movements under restraint to infuse confidence amount the terror

stricken victims. (2) the accused is likely to abscond and evade the process of law, (3) the accused is given to violent behaviours and is likely to

commit further offences unless his movements are brought under restraint and (4) accused is a habitual offender and unless kept in custody, is likely

to commit similar offences again, that if these parameters are applied for this case, the Petitioner cannot be further detained because the first

ground, viz., to infuse confidence among the terror - stricken victims is not applicable for this case as there are no individual victims, that there is no

chance for this Petitioner to abscond or evade the process of law as sufficient safeguards for his appearance in Court can be enforced against him

in the event of his being released on bail, and the third ground, viz., violent behaviour, is also not the allegation against the Petitioner and the fourth

ground that there is chance for his committing similar offences again will not arise because already J. Jay T.V. Pvt., Ltd., is closed and therefore,

following the above guidelines, there is no necessity for further detention of the Petitioner and he shall be released on bail.

7. With regard to the arrest of the Petitioner, it cannot be stated that there is no reason or circumstance or ground for the arrest of the Petitioner.

As a matter of fact, the contention raised in the petition is that as the alleged violation during February 1996 to June 1996 is part of the earlier

transaction, and as this is not a separate to transaction, the arrest is said to be not bona fide. The learned Counsel for the Petitioner Mr. B. Kumar

has not argued before me that there are no grounds for the arrest of the Petitioner. The learned Counsel would admit the Petitioner as the

Managing Director of J. Jay T V. and also the transaction with M/s. Intersputnik Moscow and M/s. Singapore Telecom, Singapore, for

transponder and uplinking facilities for J. Jay T.V. But he submitted before me that no financial transaction was entered into with the said M/s.

Intersputnik, Moscow, and M/s. Singapore Telecom. Singapore, for the telecasting facilities as J. Jay T.V. had supplied the software parts required for telecasting the programme, that the telecasting companies were benefited by collecting the advertisements and no separate transaction

was made towards the hiring charges. However, it is mentioned by the Respondent that one K. Ramachandran of Singapore had transaction on

behalf of M/s. J. Jay T.V. Ltd., and in his statement, he has mentioned the payment of the abovesaid amount to the tune of Singapore $ 6.15, 160

on behalf of J. Jay T.V. and therefore, the Petitioner had the telecasting facilities in a foreign country and a person connected with the Petitioner has

contravened the provisions of Section 8(1) read with Section 68(1) of the Foreign Exchange Regulation Act. When admittedly the Petitioner had

the telecasting facilities in a foreign country and a person connected with the Petitioner has also given a statement to the effect that J. Jay T.V. has

paid so much Singapore Dollars for getting the telecasting facilities from the foreign country. It cannot be stated that the arrest was made before

reaching reasonable satisfaction. u/s 35 of the Foreign Exchange Regulation Act, the Enforcement Directorate has every power to arrest a person if

the Officer of the Enforcement Directorate has reason to believe that the person arrested has been guilty of an offence punishable under this Act.

Therefore, the arrest of the Petitioner cannot be said to be mala fide or without sufficient grounds.

8. The other decision relied upon by the learned Counsel for the Petitioner Mr. B. Kumar viz. D.K. Basu v. State of West Bengal JT. 1997 (L)

SC. L is a decision dealing with the custodial violence, some times leading to deaths also. This decision mainly refers to the difficult situation to

secure evidence for such custodial violence and insists the Courts to have changed outlook in such crimes and has suggested certain safeguards

after arrest apart from insisting for the pecuniary compensation for the victims. While dealing with the above subject, the Supreme Court has

proceeded to observe:

The precious right guaranteed by Article 2L of the Constitution cannot be denied to convicts, under - trials, detenus and other prisoners in custody,

except according to the procedure established by law by placing such reasonable restriction as are permitted by law.

In paragraph 34 of the judgment, the Apex Court, would observe:

There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in

the interest of security of the State in various situations prescribed under different statutes has been upheld by the Courts. The right to interrogate

the detenus, culprits or arrests in the interest of the nation, must take precedence over an individual''s right to personal liberty. The latin maxim salus

populi est supreme lax (the safety of the people is the Supreme law) and salus reipublicae est supreme lex (Safety of the State is the Supreme Law)

coexist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the

community The action of the State, however, must be ''right just and fair''. Using any form of torture for extracting any kind of information would

neither be ''right nor just nor fair'' and, therefore, would be impermissible, being offence to Article 21....

Therefore, even in this decision relied upon by the learned Counsel for the Petitioner, the interest of the nation takes precedence over individual

rights, to personal liberty.

9. The learned Counsel for the Respondent Mr. K. Kumar, Special Public Prosecutor, would refer to a decision in State of Gujarat Vs. Mohanlal

Jitamalji Porwal and Another, Wherein the Apex Court would refer to the seriousness of the economic offences. The Supreme Court would

observe:

5. ...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 consequences 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 permissive eye unmindful of the damages done to the national economy and national interest....

With regard to the parameters referred to in Joginder Kumar Vs. State of U.P. and others, the Apex Court, in the same decision, would refer to

the suggestions of the Royal Commission, England, with regard to the power of arrest, commission had suggested that the arrest is necessary to secure or preserve evidence or relating to that offence or to obtain such evidence from the suspect by questioning him. Therefore, the arrest and

detention becomes necessary to secure or preserve the evidence relating to the offence. It is contended for the Respondent Enforcement

Directorate that the investigation is not yet over and as the witnesses relating to this offence are residents abroad and as some more time is required

to examine other witnesses relating to the transactions, the Petitioner may not be released on bail as he would tamper with the witnesses and

obliterate the investigation. This apprehension of the Respondent cannot be said to be unreasonable because the persons, who contacted the

foreign companies for telecasting the programmes of J. Jay T.V. must be the persons interested in the Petitioner or persons acted for the pecuniary

considerations. Therefore, naturally, the Petitioner may attempt to contact those persons to screen the evidence or materials that are available now

as a proof for the transaction. For the reason that the Respondent has recorded a statement from Ramachandran even on 11.11.1996 and

12.11.1996, it cannot be stated that the whole investigation in Singapore is over. But the learned Counsel for the Petitioner would submit that the

Enforcement Directorate has issued the show cause notice u/s 6L of the Foreign Exchange Regulation Act giving opportunity to the Petitioner for

showing that he had such permission and the notice for opportunity for making representation u/s 51 of the Act also has been issued to the

Petitioner and in view of the notices, the investigation must have been completed and therefore, the Petitioner might be released on bail. The

learned Counsel for the the Petitioner Mr. B. Kumar would further submit that u/s 41 of the foreign Exchange Regulation Act, the documents

seized in connection with the contravention of the provisions of the Act would be kept by the Officer of the Enforcement Directorate only for a

period of six months and only if the enquiry could not be completed within the said period of six months, the Proviso to Section 41 of the said Act

would be invoked to seek further period of six months stating the reasons for such extension of further period and in this case, the Respondent

Enforcement Directorate did not ask for the extension of further period to keep the records with them and this is a clear indication that the

investigation has been completed and therefore, the Petitioner need not be further detained in judicial custody.

The Learned Special Public Prosecutor Mr. K. Kumar would reply that the issue of the show cause notice and opportunity notice under Sections

61 and 51 of the Act, will not set at naught the ongoing investigation on various aspects and the process of investigation would come to an end only

when the final report/charge sheet was filed before the appropriate Court and till then, it cannot be stated that the investigation has been completed.

The learned Special Public Prosecutor made his submission that as Section 167(2) of the Code of Criminal Procedure contemplates the filing of

the charge sheet within 60 days for the continuation of the detention of the accused and on account of this exigency, though the investigation is still

in progress, these show cause and opportunity notices have been issued to the Petitioner, but the issue of these notices by themselves will not make

it that the investigation is over. Referring to Section 173(8) Code of Criminal Procedure, the learned Special Public Prosecutor brings to my notice

that even after the filing of the charge sheet, the investigating agency has right to proceed with further investigation and in this cases the details have

to be gathered not only in India but also from abroad, the officers of the Directorate are unable to complete the investigation within the short time

and as certain details are awaited from abroad, if the Petitioner is released at this stage, it will very much affect the investigation and it will amount

to interference in the investigation itself. The learned Special Public Prosecutor referred to a decision in State of West Bengal and Others Vs.

Sampat Lal and Others, in which case, when the investigation by the State was in progress, the High Court directed the State Government to

appoint a Special Officer to enquire into the matter and the Apex Court in that case has held that it will amount to interference in the investigation.

The other case cited by him is Central Bureau of Investigation v. Niyamavedi 1995 (2) SCALE 127 in which case, when the investigation was

entrusted to Central Bureau of Investigation, a writ petition was filed by an organisation ''Niyamavedi'' as Public Interest Litigation seeking the

arrest of the Director of the Central Bureau of Investigation for his alleged involvement in that case. The Division Bench of the Kerala High Court,

while dismissing the writ petition, made certain observation as to the contents of the diary. As against that observation the Apex Court has

expressed that when the investigation was in process, the High Court should not have disclosed the materials contained in the diary produced before the Court and the statement, as it would amount to interference in the investigation. Both these decisions may not have any bearing for the

present situation because in the first case, the investigation itself was changed at the instance of the High Court whereas in the second case, the

contents of the records, which were part of investigation, were divulged by the Court. Therefore, in those cases, it was found that it would amount

to interference in the investigation.

It is undeniable that the Court should safeguard the process of investigation without any slightest interference at the instance of anybody. As

mentioned above, the transaction relating to the violations of the Act had taken place in a foreign country and therefore, it may take sometime for

the Respondent Enforcement Directorate to complete the investigation and even if the Petitioner is imposed with any condition like making him to

remain in a particular place, in these modern days, which have so many transmitting facilities, it cannot be stated that there will not be any attempt

on the part of the Petitioner to screen the evidence. Therefore, the objection taken by the Respondent cannot be said to be unreasonable. At the

same time as argued by the learned Counsel for the Petitioner Mr. B. Kumar, a balance has to be struck between the liberty of the individual,

protected under the Constitution and also the interest of the nation. As the alleged violation has caused loss to the tune of crores of rupees to the

nation and as observed in the decision cited above, such economic offences ruin the economy of the State, naturally the interest of the nation is a

paramount consideration. Therefore, before the investigation is completed, it is not safe to release the Petitioner on bail.

The learned Special Public Prosecutor appearing for the Respondent, Mr. K. Kumar contended that another accused viz. Mrs. N. Sasikala,

Chairperson of M/s. J. Jay T.V. Pvt. Ltd., also was arrested for the same offence of having transaction with M/s. Intersputnik, Moscow, for the

transponder facility and with M/s. Singapore Telecom, Singapore for uplinking facilities, that Mrs. Sasikala moved this Court for bail in Crl. O.P.

No. 9802 of 1996, that this Court, after elaborate consideration of the prayer of Mrs. Sasikala, has dismissed the petition on 24.12.96 that

subsequently, the said Sasikala filed SLP S.L.P. No. 25 of 1997 before the Supreme Court seeking bail, that the Supreme Court also dismissed the petition on 13.1.1997, that as this Petitioner being the Managing Director of J. Jay. T.V. Ltd., is placed with the same position along with the

Chairperson Mrs. Sasikala, whose prayer for bail has been rejected this Petitioner cannot claim the benefit of the bail against the view of Apex

Court and therefore, this petition deserves to be dismissed. It cannot be denied that the other Petitioner in Crl. O.P. No. 9802 of 1996, being the

Chairperson of M/s. J. Jay.T.V. Pvt. Ltd., is also placed along with the Petitioner herein, the Managing Director of M/s. J. Jay. T.V. Pvt. Ltd., for

the violation of the provisions of the Foreign Exchange Regulation Act. As the offences alleged against them are one and the same and the mode of

violation also is the same, the Petitioner cannot be discerned from the other accused viz. Mrs. N. Sasikala. But the learned Counsel for the

Petitioner Mr. B. Kumar would submit that as the show cause notices have been issued u/s 61 and also u/s 51 of the Act, this is a change of

circumstance showing the conclusion of the investigation and this petition is discernible from that of Mrs. Sasikala and therefore, the dismissal of

SLP filed by Sasikala before the Apex Court cannot be a ground to dismiss this petition. Learned Counsel for the Petitioner refers to the view

taken in Indian Oil Corporation v. State of Bihar Vol. 69 FJR 287. In that case, it was held that the dismissal of the SLP by the Supreme Court

against the award of the Labour Court by a non-speaking order, will not operate as a bar against the Appellant to challenge the impugned award

before the High Court under Article 226 of the Constitution. The decision refers to two remedies to the Appellant therein, one by filing the SLP

before Supreme Court and the alternative remedy under Article 226 of the Constitution of India, so as the SLP was dismissed by a non-speaking

order, the other remedy under the Constitution is not lost to the Appellant. But in this case, the SLP was dismissed ever after the argument that the

High Count''s order of dismissal of bail application was erroneous. The dismissal of the SLP would show that no interference was needed in the

order of the High Court. Certainly, the Petitioner herein has right to move for bail as he is an another accused in that case, But as the offence is

common to that Petitioner, Mrs. N. Sasikala, and this Petitioner, except the change of circumstances, namely the issue of the show cause notice

and the opportunity notice, there are no other new facts to be considered in this case. This Court has elaborately considered the claim of the other accused Smt. N. Sasikala and has rejected her prayer for bail, in N. Sasikala v. Enforcement Officer ILR (1996) 3 Mad 621.

While taking into consideration of the magnitude of the offence in which crores of rupees are involved affecting the economy of the nation and there

is reasonable apprehension that the release of the Petitioner on bail would obliterate the investigation, which is going on in a foreign country, I also

feel that the Petitioner cannot be released on bail. Therefore the petition deserves to be dismissed and is accordingly dismissed.

