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RAMJHAN GANI PALANI

v.

NATIONAL INVESTIGATING AGENCY AND ANR.

(Petition for Special Leave to Appeal (Criminal) No. 8942 of 2021)

B

APRIL 27, 2022

**[N. V. RAMANA, CJI, KRISHNA MURARI AND
HIMA KOHLI, JJ.]**

C *Bail: Regular bail – Denial of – Matter pertaining to seizure of huge quantity of Narcotics drug, Heroin near Port in Gujarat in a joint operation by the Indian Coast Guard and Directorate of Revenue Intelligence-DRI – Prosecution case that on receiving intelligence input, the DRI intercepted a Pakistani boat in the Indian territorial waters which was trying to escape – Seizure of bags*
D *containing narcotic substance, and the Captain of the boat admitted dumping some bags into the sea along with a satellite phone – Investigation revealed that narcotics were being clandestinely brought into Gujarat from Pakistan through the sea route – Detention of petitioner on a reasonable belief that he was the Indian recipient for the drug consignment brought into the Indian territory*
E *by the Pakistani Flag Ship – Bail application by petitioner – Denial of regular bail by the courts below – On appeal, held: There is sufficient material on record to deny the discretionary relief of bail to petitioner – Petitioner has been chargesheeted for a serious offence where the minimum punishment prescribed is of ten years –*
F *Thus, the impugned order not interfered with – Narcotic Drugs and Psychotropic Substances Act, 1985 – ss. 2, 8, 16, 17, 18, 23, 24, 29 and 32 (B) (e) – Penal Code, 1860 – ss. 120-B, 121-A & 122 – Unlawful Activities (Prevention) Act, 1967 – ss. 17, 18, 18-B, 20.*

G EXTRAORDINARY APPELLATE JURISDICTION: Petition for Special Leave to Appeal (Crl.) No. 8942 of 2021.

From the Judgment and Order dated 19.08.2021 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No.808 of 2021.

H R. Basant, Azmat Hayat Amanullah, Nishant Awana, Devansh Malhotra, Ms. Nitya Sharma, Akshay Sahay, Advs. for the Petitioner.

K. M. Nataraj, ASG, Subhranshu Padhi, Ms. Ruchi Kohli, Vinayak Sharma, Arvind Kumar Sharma, Ms. Deepanwita Priyanka, Advs. for the Respondents. A

The Order of the Court was passed by

HIMA KOHLI, J.

1. The petitioner has filed the present petition seeking special leave to appeal against the order dated 19th August, 2021, passed by the Gujarat High Court, dismissing the appeal preferred by him against the order dated 19th March, 2021, passed by the Special Judge, National Investigating Agency, Ahmedabad, whereby his bail application was rejected in a case registered originally by the Directorate of Revenue Intelligence¹ and subsequently taken over by the National Investigating Agency for offences under Sections 120-B, 121-A & 122 of the IPC, Sections 17, 18, 18-B, 20 of Unlawful Activities (Prevention) Act and Sections 2, 8, 16, 17, 18, 23, 24, 29 and 32 (B) (e) of the Narcotic Drugs and Psychotropic Substances Act, 1985², relating to seizure of 236.622 Kgs. of Narcotics drug, Heroin near Jakhau Port, Gujarat on 21st & 22nd May, 2019 in a joint operation by the Indian Coast Guard and DRI. B C D

2. The case of the prosecution is that on receiving intelligence input, the DRI had intercepted a Pakistani boat in the Indian territorial waters which was trying to escape on 21st May, 2019. The Indian Coast Guard had chased and caught the Pakistani boat with one Captain and five crew members on board. The Captain had admitted to dumping some bags into the sea along with a satellite phone. 194 packets were retrieved from the seven bags containing a total quantity of 217.856 Kgs of narcotic substance, Heroin and were seized. Subsequently, 17 more packets of Heroin weighing 18.766 Kgs were also recovered from the coastal area near the location, thereby taking the total seized quantity of Heroin to 236.622 Kgs in 211 packets. The investigation revealed that narcotics were being clandestinely brought into Gujarat from Pakistan through the sea route. During his interrogation, the Captain of the Pakistan Flag ship, “*Al Madina*” stated that delivery of the consignment of the narcotic drugs had to be made at a particular position on the sea for which a communication was to be sent on VHF to the Indian counterpart. Communication channel No. 8 was earmarked for this purpose on which E F G

¹ For short ‘the DRI’

² For short ‘the NDPS Act’

- A he was to use the call sign “*Mohammed*” and the Indian counterpart was to respond with the sign “*Ramzan*”.

3. On receiving the aforesaid information, a radio operator was deputed by the Indian Coast Guard Officers to go on calling “*Mohammed-Ramzan-Ramzan*” by a hit & trial method on VHF Channel No.16, being an International Maritime channel that was meant for use of fishermen communication and for Ship-to-ship contact. In response to the said call, the petitioner herein on board an Indian fishing boat drifting in a nearby location close to where the Pakistan Flag Ship was intercepted, had replied, “*Ramzan-haan bolo*”, but on VHF Channel No.8. The prosecution version is that there was only one Indian fishing boat in the immediate vicinity that belonged to the petitioner herein with twelve crewmen on board. The said boat had remained on the high sea for 4-5 days and in all that period, they had managed to catch only five fish. Moreover, the Captain and the crew members of the Indian fishing boat appeared with neat and clean clothes, though the petitioner claimed to be fishing on the high sea for 4-5 days. Even the fishing net and the deck of the boat were found unsoiled, clearly, pointing a finger of suspicion towards the petitioner. It was contended that no attempt was made to prove that any substantial number of fish had been caught while on sea and that the boat was drifting at that location for five days only with the motive of collecting the consignment of the contraband. As a result, the petitioner was detained on a reasonable belief that he was the Indian recipient for the drug consignment brought into the Indian territory by the Pakistani Flag Ship.

4. Learned Special Judge, National Investigating Agency³, Ahmedabad rejected the regular bail application filed by the petitioner vide order dated 19th March, 2021. Aggrieved thereby, the petitioner preferred an appeal that has been dismissed by the Division Bench of the High Court of Gujarat by a detailed order dated 19th October, 2021, holding *inter alia* that there is more than a *prima facie* case made out against him, pointing to his involvement in the offence.

5. Mr. R. Basant, learned Senior Counsel appearing for the petitioner has argued that the High Court has gravely erred in denying the relief of bail to the petitioner and the entire case of the prosecution is based on suspicion; that the petitioner is a victim of unhappy coincidents

³ For short ‘the NIA’

of being at the wrong place at the wrong time; that except for the petitioner, none of the twelve crew members on the boat were arrested or charged as accused persons; that the petitioner has clean antecedents and there is no likelihood of his committing any overt act if granted bail. A

6. Much emphasis has been laid by learned Senior Advocate appearing for the petitioner on the fact that merely because the petitioner had replied to the communication “*Mohammed*” on the VHF Channel with the words “*Ramzan haan bolo*”, cannot be treated as sufficient to reject his bail application, more so, when the petitioner’s name happens to be Ramjhan Gani Palani. Therefore, simply because the petitioner had replied on Channel No.8 to the radio operator who had transmitted the aforesaid message on VHF Channels No.8 and 16, can hardly be treated as a ground to substantiate the case of the prosecution. Reference was also made to the invoice for a sum of ₹3,47,325/- (Rupees Three lakhs forty- seven thousand three hundred twenty-five only), being the value of the seven fish sold by the petitioner after the boat was released. It was contended that out of the seven fish, five fish were “Ghol fish” colloquially known as “sea gold” weighing 104 kg, which are a rare catch and very expensive. The price of this fish is stated to be pegged at around ₹1400/- (Rupee Fourteen Hundred only) per kg in the market. Claiming that even on an earlier occasion, the petitioner had gone on the high seas looking for Ghol fish that was caught and sold for a handsome amount which was enough to demonstrate that he was neither involved in illegal trade of narcotics, nor was he tipped to approach the Pakistani Flag ship, detained by the authorities. Lastly, it was contended that merely because the boat and the crew members were found to be neat and clean, could not be a ground to deny the relief of bail to the petitioner. B C D E

7. Mr. K.M. Nataraj, learned Additional Solicitor General for the respondent No.1/NIA vehemently opposed the present petition and submitted that after the six Pakistani nationals found on board of the Pakistani fishing vessel were arrested on 24.05.2019, the petitioner was arrested two days later on 26.5.2019. On 15.11.2019, a complaint was registered under the provisions of the NDPS Act, 1985, at the instance of DRI before the Special Judge for NDPS Cases at Bhuj, Gujarat against all the seven arrested accused including the petitioner. As per the said complaint, the petitioner was charged with offences punishable under Sections 28, 29 and 30 of the NDPS Act for which the punishment prescribed is imprisonment for a minimum period of ten years, which F G H

A can extend up to a maximum period of twenty years. Subsequently, on the orders of the Ministry of Home Affairs, Government of India, further investigation of the case was transferred to the NIA and the case was re-registered on 26.05.2020 at NIA Police Station, New Delhi vide RC No.24/2020/NIA/DLI.

B 8. Learned counsel for the respondent No.1/NIA stated that on 18.12.2020, NIA had filed a charge sheet before the NIA Special Court, Ahmedabad against the 6 arrested Pakistani nationals and the petitioner herein for offences related to the attempted smuggling of the narcotic drug, Heroin. He pointed out that as per the charge sheet, nine Pakistani
C nationals who are absconding, have been shown as wanted accused and their role in the matter is still under investigation. As on date, charges have been framed against the petitioner and the six arrested Pakistani nationals. It was urged that the petitioner is under an erroneous assumption that the case against him is a routine matter while over-looking the fact that the present case relates to organized smuggling of narcotic drugs,
D for sale in India and for generating funds meant for promoting terrorist activities, which is a serious offence and a valid ground for denying him the relief of bail.

9. We have perused the impugned order and carefully considering the arguments advanced by learned counsel for the parties, duly recorded
E in paras 8 and 9 of the impugned judgment and are of the *prima facie* view that there is sufficient material on record to deny the discretionary relief of bail to the petitioner. Much is sought to be made of the five Ghol fish netted by the petitioner and his crew members over five days of remaining on the high seas by referring to the high market value of the prize catch. The petitioner would be entitled to justify his presence in the
F fishing boat, at the scene of crime which is sought to be described as a sheer coincidence during the trial. The explanation offered by the petitioner of having responded to the call "*Mohammed-Mohammed-Ramzan-Ramzan*" on Channel No.8, instead of Channel No.16 which is the specifically earmarked channel for communication with fishermen
G and for Ship-to-Ship contact, would also be available to him at that stage. But at the threshold, this appears to be a case where the petitioner has been fishing in troubled waters and as per the respondent No.1/NIA, has got caught in his own net.

H 10. Records reveal that the chargesheet has been filed by the respondent/NIA on 18.12.2020. As per the said chargesheet, nine

Pakistani nationals are still absconding. Further, investigation in the case is still pending. The petitioner has been chargesheeted for a serious offence where the minimum punishment prescribed is of ten years. We are, therefore, not inclined to exercise our discretion in favour of the petitioner by interfering with the impugned order, at present. A

11. Resultantly, the petition for special leave to appeal is dismissed. B
Needless to state that the observations made hereinabove, are limited to examining the prayer made by the petitioner for grant of regular bail and shall not be treated as an observation on the merits of the case, particularly when the trial has yet to commence.

Nidhi Jain
(Assisted by : Tamana, LCRA)

Petition dismissed.