



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Tenth day of February Two Thousand Fifteen

PRESENT

THE HON`BLE MR JUSTICE P.N.PRAKASH

CRL OP(MD) No.1304 of 2015

S. THILLAI MAHARAJAN

... PETITIONER/ACCUSED

Vs

THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
TUTICORIN DISTRICT.
(CRIME NO.4 OF 2015)

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.M.AJMAL KHAN, SENIOR COUNSEL
FOR M/S. C.SELVAKUMAR Advocate

For Respondent : MR.A.P.BALASUBRAMANIAN, Govt. Advocate (Crl. Side)

For Intervenor : MR.D.SHANMUGARAJA SETHUPATHI, Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

Apprehending arrest at the hands of the respondent police in Crime No.4 of 2015, on the file of the respondent police for offence under Sections 420, 467, 468, 470, 471 and 472 IPC, the petitioner is now before this Court seeking Anticipatory Bail. The defacto complainant in this case is Upasana Engineering Ltd., rep. by its Vice President V.Arumugam.

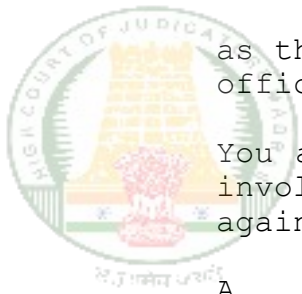
2. On 28.01.2010, this Court passed the following order:-

"The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 420, 467, 468, 470, 471 and 472 IPC in Crime No.4 of 2015 on the file of the respondent police, seeks anticipatory bail.

2. It is the case of the defacto complainant that they are manufacturing and exporting certain items to various countries. They had engaged M/s.Rhenus Prolog Logistics Limited (A1) and M/s.DSV Air and Sea Private Limited (A2) as their clearing and forwarding agents for handling exports. Under the terms of agreement, it is the duty of clearing and forwarding agency to obtain GSP (Generalized System of Preferences) certificate for satisfying the requirement of Export Inspection Agency. The defacto complainant appears to have been served with show cause notice dated 27.10.2014 from the Export Inspection Agency, Chennai in which they have stated as follows:

"Investigation carried out by this office revealed that:

<https://hcservices.ecourt.gov.in/hcservices/> The GSP certificate of origin (GSP) obtained, could not be verified as the office record are not available as reported by our Tuticorin Sub-office. Please submit your clarification



as the 113 certificates were not issued by our Tuticorin Sub-office.

You are therefore required to show cause as to why sanctions involving one or all of the following may not be invoked against them.

A. Suspension of facility for your goods to obtain certificates of origin under any unilateral / bilateral / multilaterals referential scheme, in future.

B. Withdrawal of preferential tariff accorded by the Romania customs for the consignment cover by the certificate.

C. Legal Penalty

M/s.UPASANA ENGINEERING LTD. India may also state whether a personal hearing is desired. If no reply is received by 05.11.2014 action will be initiated ex-parte."

After receipt of show cause notice, the defacto complainant appears to have approached these two clearing and forwarding agencies and have been requesting them to provide details with regard to the sources of 113 GSP Certificates, which are under dispute. Thillai Maharajan / petitioner herein is the Branch Manager of M/s.DSV Air and Sea Private Limited.

3. According to the petitioner, the defacto complainant is aware that the said GSP certificate was handled by the agent, namely, Indian Shipping Service at Tuticorin and further the said Indian Shipping Service at Tuticorin had handed over the GSP certificate directly to the defacto complainant.

4. Be that as it may, going by the averments in the complaint, the defacto complainant has stated that they have paid charges for obtaining GSP certificate to the clearing and forwarding agent and that it is the legal obligation to obtain GSP certificate from Export Inspection Agency, Tuticorin Sub-Office. Therefore, in the considered opinion of this Court, there is legal and moral obligation on the part of this petitioner to explain the sources of many GSP certificates so that the defacto complainant does not suffer consequences as stated in the show cause notice dated 27.10.2014 issued by the Export Inspection Agency.

List this matter on 02.02.2015 for hearing."

3. Today, the respondent police is present and Mrs.Jaya Princes, the Inspector of Police, District Crime Branch, Thoothukudi District has filed a status report detailing the investigation that has been carried out by her in this case. The police have refuted the contention of the petitioner that the GSP (Generalized System of Preferences) certificate was handled by Indian Shipping service at Tuticorin. In paragraph No.6 of the status report it is stated as follows:-

"It is submitted that I have also interrogated the petitioner herein is not correct to state that the GSP certificate was handled by the Agent namely Indian Shipping Service at Tuticorin. Further, it is also not correct to state that the above said Indian Shipping Service had handled over the



GSP Certificates directly to the defacto complainant. In fact, the defacto complainant entered into agreement only with the accused company and there is no contract between the Indian Shipping Service and the complainant company. Therefore, the accused companies are responsible for having handed over the fabricated certificates to the complainant company."

4. Therefore, the police is strongly objecting to the grant of anticipatory bail to the petitioners. The respondent police have recovered 113 impugned GSP certificates. It is represented by both sides that the GSP certificates are printed in triplicate. The first one is with the Export Inspection Agency, the second one was sent along with consignment to Denmark. The third one is in the possession of the complainant. The police have taken possession of the triplicate part of the GSP certificate from the defacto complainant and they are now investigating as to whether the certificates have been forged. Therefore, they have made necessary applications before the concerned Magistrate for summoning the officers of Export Inspection Agency who were manning the office during the relevant time for getting their specimen writings and signatures.

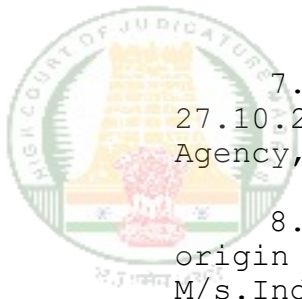
5. Admittedly, no part of the certificates are with the petitioners. The petitioner has filed an affidavit in which he has stated as follows:-

"5. I respectfully state that the GSP certificate is issued by Export Inspection Agency, Thoothukudi Sub Office on payment of Rs.150 till 2011 and the sum of Rs.350 thereafter. The defacto complainant used to pay the said amount with service charges for obtaining the certificate. We engage the services of M/s.Indian Shipping Services, a custom house agent for obtaining the GSP certificates. Though in the complaint it was stated as 14 certificates were obtained through us, it was only the following 13 certificates were obtained through us:

CERTIFICATE Nos. AS FOLLOWS

- (i) 31911897 dated 01.02.2010
- (ii) 34674529 dated 05.04.2010
- (iii) 34608309 dated 14.05.2010
- (iv) 34608310 dated 14.05.2010
- (v) 34608318 dated 24.05.2010
- (vi) 34608319 dated 24.05.2010
- (vii) 34610272 dated 05.07.2010
- (viii) 34610281 dated 16.07.2010
- (ix) 34558510 dated 30.08.2010
- (x) 34558515 dated 06.09.2010
- (xi) 34558557 dated 26.10.2010
- (xii) 34558587 dated 23.11.2010
- (xiii) 35311132 dated 03.08.2011

6. I respectfully state that, we engaged the services of M/s.Indian Shipping Services for obtaining the certificate and paid the fee and service charges. That on 06.0.2015, when the respondent police interrogated me I gave a statement that we obtained the said certificates only through the said M/s.Indian Shipping Services. It is on the strength of the said statement, the officials of M/s.Indian Shipping Services were also interrogated by the respondent police. They also gave a statement that the certificates are genuine and also produced necessary documents to substantiate the same.



7. I respectfully state that the show cause notice dated 27.10.2014 appears have been issued by the Export Inspection Agency, Chennai to the defacto complainant only on suspicion.

8. I respectfully state that the said GSP certificates of origin for Upasana were obtained by us through our agent namely M/s.Indian Shipping Services at Tuticorin. It is submitted that we undertake before this Hon'ble Court that we are prepared to appear and co-operate with the Export Inspection Agency, Chennai by stating that the de-facto complainant is not at fault and further we undertake to give necessary statement before the Export Inspection Agency, Chennai regarding obtaining of GSP certificate of origin."

6. From the above, the petitioner has given an unconditional undertaking that he will assist the defacto complainant in the proceedings that have been initiated by Export Inspection Agency, which is now pending before the appellate authority viz., the Export Inspection Council at New Delhi.

7. On a close scrutiny of the evidence collected by the police, it is clear that the defacto complainant viz., Upasana Engineering Limited were not responsible for fabricating the impugned GSP Certificates and that they in their usual course of business had appointed M/s.DSV Air and Sea Private Limited as their clearing and forwarding agent on account of the reputation of DSV. Since the petitioner has unconditionally undertaken to solve the problem, his custodial interrogation may not be essential in this case. Hence, this Court is inclined to grant anticipatory bail to the petitioner, but with certain conditions.

8. Accordingly, the petitioner is ordered to be released on bail, in the event of arrest or on his appearance before the learned Judicial Magistrate No.I, Tuticorin, Tuticorin District on executing a separate 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 respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that,

(a) the petitioner shall report before the respondent police and given his signature, thumb impression, hand writing samples whenever demanded by the respondent police.

(b) The petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] As per undertaken, the petitioner shall appear before the Export Inspection Agency and the Export Inspection Council at Delhi and submit his explanation to them in connection with the enquiry and assist Uapasana Engineering Ltd., in all possible manner.

(f) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed on the petitioner when released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].



9. The petitioner shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy made ready failing which, the petitioner for anticipatory bail stands dismissed.

sd/-
10/02/2015

WEB COPY / TRUE COPY /

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

TO

1. THE JUDICIAL MAGISTRATE NO.I,
TUTICORIN.
2. -DO- THRO THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI.
3. THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, TUTICORIN DT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC TO M/S.C.SELVAKUMAR ADVOCATE SR.NO. 6172
+1CC TO M/S.D.SHANMUGARAJA SETHUPATHI, ADVOCATE IN SR : 6193

SR : 16.02.2015 : 5P/7C

ORDER
IN
CRL OP(MD) No.1304 of 2015
Date :10/02/2015