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

Monday, the Twenty Ninth day of August Two Thousand Sixteen

PRESENT

The Hon`ble Ms.Justice V.M.VELUMANI

CRL OP(MD) No.14230 of 2016

1 ANICHANDRAKALA
2 P.REGIN ... PETITIONERS / ACCUSED

Vs

1 SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE, REGIONAL UNIT,
22, SOUTH BEACH ROAD, RACHE COLONY, TUTICORIN

2 SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE, REGIONAL UNIT,
C.R.A.16, RESHMI, CONVENT ROAD,
VANCHIYOR POST, TIRVANDRUM
CRIME NO NOT KNOWN OF 2016 ... RESPONDENTS / COMPLAINANT

For Petitioner : M/S GIRIDHAR AND SAI Advocate

For Respondent : Mr.C.ARUL VADIVEL @ SEKAR FOR SPL.P.P. FOR DRI

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

ORDER : The Court Made the following order :-

The petitioners, who are arrayed as accused, apprehend arrest based on the case registered in O.R.No.DRI/BZU/TVM/04/2016, dated 22.07.2016, on the file of the second respondent and hence, seek anticipatory bail.

2.The case of the prosecution is that the first petitioner is the proprietrix of Regin Exports and wife of the second petitioner. The first petitioner imported a total quantity of 3,497 metric tonnes of raw cashews under import authorisation (Advance License Scheme) on condition that $1/4^{th}$ of the processed raw cashew nuts must be exported. The first petitioner had diverted the major quantity of raw cashew nuts imported duty free to the concern of the second petitioner. From there, they delivered to their branches and also some other units on commission basis. The second respondent conducted search at their premises on 22.07.2016 and seized incriminating documents. The petitioners have committed an offence under Section 135 of Customs Act, 1962.

3.The case of the petitioners is that they are innocent persons and they have not committed any offence as alleged by the prosecution. The first petitioner imported 3497 metric tonnes of cashew nuts under import authorisation (Advance License Scheme) on condition that 1/4th of processes raw cashew nuts must be exported. The Director General of Foreign Trade, Madurai, issued seven duty free import authorisation between 23.03.2016 and 27.05.2016. The first petitioner has to export 1/4th of the imported raw cashew nuts within 18 months after processing the same. The said period expires only in October, 2017. But, the first petitioner has exported processed cashew kernel to the tune of 47.628 metric tonnes under three shipments. The first petitioner has time till October, 2017 to export total quantity. In the meanwhile, the price of the processed cashew kernel in the export market has been fluctuating and USD exchange rate has not been steady. The first petitioner has received export orders from the parties from United States for supply of additional volume of 111.132 metric tonnes. On better price, the first petitioner will export remaining quantity within the time limit on or before October, 2017. While so, on 22.07.2016, the officials of the second respondent raided the premises of the petitioners, took custody of the originals of all available books, records, files, documents and computer systems and summoned the petitioners for enquiry. The petitioners appeared for enquiry on 25.07.2016 and 28.07.2016. The respondents have alleged that the first petitioner did not fulfil the export obligation and have instead diverted the imported goods in the domestic market and on the basis of the said allegation, the officials of the respondents, orally demanded payment of import custom duty at 9.56% on the value of total volume of goods in respect of which the petitioners are required to fulfil export obligation namely 874.25 metric tonnes less 47.628 metric tonnes, which had already been exported. The officials of the respondents informed the petitioners that unless they pay the import duty within three days, penal action would be taken and they will be prosecuted for the offence under Section 135 of the Customs Act, 1962.

4.The learned counsel for the petitioners submitted that for the alleged offence under Section 135 of the Act, the respondent can arrest the accused only under Section 104 of the Act and must produce him before the Magistrate. The respondents have no powers to arrest/detain the accused person for custodial interrogation. He relied on the Judgment of the High Court of Delhi dated 18.02.2008 made in Bail Application No.241 of 2008 **[Arun Kumar Gupta v. Directorate of Revenue Intelligence]**, wherein it is held as follows:

> "Learned Counsel for the petitioner has rightly pointed out that there is no question of any custodial interrogation since in case of detention, the petitioner has to be sent to judicial remand. The Custom Authorities unlike the police authorities cannot take the petitioner

into custody for custodial interrogation and that proposition is not even disputed by the respondent".

5.The learned Special Public Prosecutor for the Director of Revenue Intelligence, filed a counter affidavit and submitted that the first petitioner violated the terms of duty free import of raw cashew nuts in shell. The first petitioner must process the raw cashew shells at her unit and cannot divert to other units without proper permission from the competent authority and without payment of custom duty. The first petitioner diverted the imported raw cashew nuts in shell to the unit of the second petitioner and 25 other units. The second petitioner sold 377 metric tonnes of processed cashew kernels and 33 metric tonnes of raw cashew in the domestic market. The petitioners have violated Para 4.16 of Foreign Trade Policy. The petitioners are liable to pay Rs.3 crores as import duty as they have violated the conditions of import.

6.I have considered the submissions of learned counsel for petitioners and learned Special Public Prosecutor.

7.The allegations against the first petitioner is that (i) she having imported raw cashew shells under import authorisation (Advance License Scheme), failed to export $1/4^{th}$ of goods imported after processing; (ii) the first petitioner diverted the goods to the unit of the second petitioner and 25 other units without obtaining prior permission from the competent authority; (iii) the petitioners sold 377 metric tonnes of processed cashew kernels and 33 metric tonnes of raw cashew in the domestic market and (iv) the petitioners have violated Para 4.16 of Foreign Trade Policy and evaded payment of Rs.3 crores of import duty.

8.On the other hand, the contentions of the learned counsel for the petitioners, that the first petitioner has time till August, 2017 to complete the export of $1/4^{th}$ of imported raw cashew shells and that the respondents have no power for custodial interrogation, have considerable force.

9.Section 104 of the Customs Act, 1962 reads as follows:

> "**104.Power to arrest.-** [(1)If an officer of Customs empowered in this behalf by general or special order of the Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135-A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.]
>
> (2)Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.
>
> (3)Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has and is subject to

under the Code of Criminal Procedure, 1898 (5 of 1898).

(4)Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this Act shall not be cognizable".

10.This issue was considered by the Hon'ble High Court of Delhi [By the present Chief Justice of this Court, Mr.Sanjay Kishan Kaul, as he then was] in Bail Application No.241 of 2008 **[Arun Kumar Gupta v. Directorate of Revenue Intelligence]**, wherein it has been held that the respondent has no power for custodial interrogation. The Judgment referred to above is squarely applicable to the facts of the present case. Further, the first petitioner has to export 1/4th of the imported goods after processing within 18 months, namely on or before October, 2017. Considering Section 104 of the Customs Act, 1962 and applying the ratio decidendi laid down in the Judgment relied on by the learned counsel for the petitioners, custodial interrogation of the petitioners is not required and therefore, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions. Accordingly, they are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned **(*)Judicial Magistrate No.II, Nagercoil,** on condition that each of the petitioners shall execute a 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 learned Magistrate concerned and on further condition that:

(i) the petitioners shall report before the respondent department as and when required.

(ii) the petitioners shall surrender their passports before the learned **(*)Judicial Magistrate No.II, Nagercoil.**

(iii) the petitioners shall not tamper with evidence or witness either during investigation or trial.

(iv) the petitioners shall not abscond either during investigation or trial.

(v) It is made clear that on breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners.

sd/-
29/08/2016

(*) Amended as per order of this Hon'ble Court made in Crl.MP(MD) 9591/2016 in Crl.OP(MD)14230/2016 dated 05.10.2016 by BGJ.

/ TRUE COPY /

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

TO
To be substituted the order copy already despatched.

1 THE JUDICIAL MAGISTRATE No.II, NAGERCOIL.

2 DO THRO'THE CHIEF JUDICIAL MAGISTRATE, KANYAKUMARI DISTRICT.

3 SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE, REGIONAL UNIT,
22, SOUTH BEACH ROAD, RACHE COLONY,TUTICORIN

4 SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE, REGIONAL UNIT,
C.R.A.16, RESHMI, CONVENT ROAD,
VANCHIYOR POST, TIRVANDRUM.

5 THE SPECIAL PUBLIC PROSECUTOR FOR DRI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S GIRIDHAR AND SAI Advocate SR.No.59160
+1 cc to M/s.C.ARUL VADIVEL @ SEKAR, Advocate SR.No.47854

ORDER
IN
CRL OP(MD) No.14230 of 2016
Date :29/08/2016

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SD/SK-SKN/09.09.2016/5P/8C

SD/AAL-MPA/SAR-I/14.10.2016/5P/8C