



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.15597 of 2016

ISAKKIMUTHU

... PETITIONER/ACCUSED NO.2

Vs

STATE REP.BY
THE ASSISTANT COMMISSIONER OF CUSTOMS,
CUSTOM PREVENTIVE DIVISION,
66, BEACH ROAD,
THOOTHUKUDI.

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.S.M.A.JINNAH Advocate

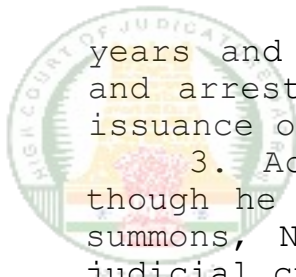
For Respondent : MR.C.ARUL VADIVEL @ SEKAR,
Special Public Prosecutor for Customs

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner is arrayed as accused No.2, who was arrested and remanded to judicial custody on 14.07.2016 for the alleged offences punishable under Sections 135(1)(a)(1) and 135(1)(b)(1) of the Customs Act in C.C.No.1 of 2004, on the file of the Assistant Commissioner of Customs, Custom Prevention Division, Thoothukudi and hence, seeks bail.

2.The case of the prosecution is that 113 silver ingots were smuggled by the petitioner and other accused and after completion of investigation, charge sheet was filed in the year 2004 in C.C.No.1 of 2004 against 11 accused and at the time of filing of charge sheet, out of 11 charge sheeted accused, 4 accused persons died. Thereafter, the case was split up and a case is pending against the petitioner in C.C.No.6 of 2005, wherein the petitioner is the second accused. The petitioner and other accused persons were absconding and the summons could not be served on the petitioner and other accused. Since the summons could not be served on the petitioner and other accused, the case was split up. The case was pending only because of non appearance of the petitioner. In spite of several summons issued, the same could not be served and hence, Non Bailable Warrant was issued against the petitioner in the year 2005 and the said Non Bailable Warrant has been pending for the past more than 10



years and the respondent police executed the Non Bailable Warrant and arrested the petitioner on 14.07.2016 after 10 years from the issuance of Non Bailable Warrant.

3. According to the petitioner, no summons was served even though he was residing in the same address and without serving the summons, Non Bailable Warrant was issued and the petitioner is in judicial custody from 14.07.2016.

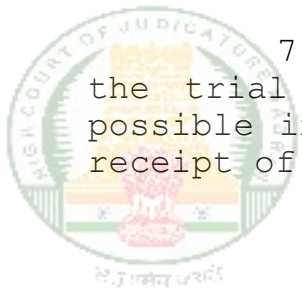
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4. The learned Special Public Prosecutor for Customs filed a counter affidavit and submitted that summons issued by the court could not be served on the petitioner and he had gone underground and only after 10 years, Non Bailable Warrant was executed and petitioner was arrested by the respondent police and if petitioner is released on bail, the trial cannot be proceeded with.

5. Considering the facts and circumstances of the case and considering the fact that the occurrence is of the year 1989 and other accused persons were acquitted and the petitioner is in judicial custody from 14.07.2016, this Court is inclined to enlarge the petitioner on bail with certain conditions. Accordingly, the petitioner is ordered to be released on bail subject to the following other conditions:

- (i) the petitioner 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 Additional Chief Judicial Magistrate, Madurai.
- (ii) the petitioner shall report before the concerned court daily at 10.30 a.m and thereafter, for all the future hearings.
- (iii) the petitioner shall not tamper with evidence or witness either during investigation or trial.
- (iv) the petitioner shall not abscond either during investigation or trial.
- (v) 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 and the petitioner 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]**.

6. The Inspector of Police concerned is directed to send a compliance report to the office of the learned Government Advocate, as to whether the petitioner is complying with the condition or not.



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7. Considering the fact that the case is of the year 1989, the trial court is directed to conclude the trial as early as possible in any event not later than three months from the date of receipt of copy of this order.

sd/-
29/08/2016

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

TO

- 1 THE ADDITIONAL chief JUDICIAL MAGISTRATE, MADURAI.
 - 2 THE ASSISTANT COMMISSIONER OF CUSTOMS,
CUSTOM PREVENTIVE DIVISION, 66, BEACH ROAD, THOOTHUKUDI.
 - 3 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- +1. CC to M/S.S.M.A.JINNAH Advocate SR.No.47659
+1 CC TO M/S.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR.NO.47853

CM
CSL/GSV-PM/SAR-III/29.08.2016:3P/6C

ORDER
IN
CRL OP(MD) No.15597 of 2016
Date :29/08/2016