



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

Wednesday, the Second day of November Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice S.VAIDYANATHAN

CRL OP(MD) No.20204 of 2016

VARATHARAJAN

... PETITIONER /SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
DEVAKOTTAI TOWN POLICE STATION,
SIVAGANGAI DISTRICT
(CRIME NO.248 OF 2016)

... RESPONDENT / COMPLAINANT

For Petitioner : M/S.V.KANNAN Advocate

For Respondent : MRS.S.PRABHA Govt. Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioner, who was arrested and remanded to judicial custody on 05.10.2016 for the alleged offences punishable under Sections 286 of I.P.C and Sections 4(b), 5 of Explosive Substances Act and Section 7(1)(a)(i) of Essential Commodities Act in Crime No.248 of 2016 on the file of the respondent police, seeks bail.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side).

3. The case of the prosecution is that on 05.10.2016, the Village Administrative Officer of Udhayatchi Village, Devakottai Taluk, Sivagangai District gave a complaint to the respondent Police stating that he received an information from the public the petitioner herein/accused has been doing crackers Business, without any valid licence. Hence, the defacto complainant/Village Administrative Officer along with the Village Assistant Officer went to the petitioner's Cracker shop and found the petitioner in possession of 29 Kg of country made crackers and 11 non-commercial Bharath Gas Cylinder, 41 Commercial Indane Gas Cylinders. Therefore, the respondent Police seized the above contrabands and registered a case in Cr.No.248 of 2016 under Sections 286 of I.P.C and Sections 4(b), 5 of Explosive Substances Act and Section 7(1)(a)(i) of Essential Commodities Act.

4. Learned counsel for the petitioner submitted that the petitioner is innocent and a false case has been foisted against



him. He would further submit that for no fault of his, the petitioner is under incarceration for the past 26 days.

5. Learned Government Advocate (Crl. Side) submitted that investigation is yet to be completed.

6. For the sake of convenience, Section 165(3) of Explosives Rules, 1983, is extracted below:

"165:Renewal of licence:

(3) Every application for the renewal of a licence shall be made so as to reach the licensing authority or the authority empowered to renew the licence at least 30 days before the date on which the licence expires, and if the application is so made, the licence shall be deemed to be in force until such date as the licensing authority renews the licence or until an intimation that the renewal of the licence is refused, has been communicated to the applicant."

7. Admittedly, the petitioner is having a licence to run the shop, which is valid upto 31.03.2016 and thereafter, he filed an application on 22.02.2016 for renewal for a period of one year I.e from 01.04.2016 to 31.03.2017. As per 165(3) of the Explosives Rules, 1983, for the persons already having a licence, the authority is empowered to renew the licence before the expiry of 30 days and they have to pass appropriate orders either renewing the licence or rejecting the request. If no order is passed, as per the aforesaid rule, licence should be deemed to be in force until such date as the licensing authority renews the licence or until an intimation that the renewal of the licence is refused, has been communicated to the applicant.

8. Even though, there is serious allegation made against the petitioner, there is no reason why the authorities have not acted in terms of Explosives Rules, 1983, which is extracted supra.

9. On knowing that when there are serious allegations made that the accused have manufactured the country bombs and other explosive substances, which may be likely to endanger life or cause serious injuries to the public, the authorities should have passed an appropriate order within the stipulated period.

10. That being the case, by not passing an order, and enabling the accused to escape from the clutches of law, based on technical and hyper-technical grounds, the authorities are responsible for this situation. Hence, this Court is inclined to grant bail to the petitioner. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions:

(i) the petitioner shall execute a bond for a sum of Rs.20,000/- (Rupees twenty Thousand Only) with two sureties, each for a like sum to the satisfaction of the Judicial Magistrate, Devakottai;

(ii) the petitioner is directed to stay at Chennai and report before the Flower Bazaar Police



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Station daily at 10.30 a.m. for a period of 30 days and thereafter before the respondent Police until further orders;

(iii) the petitioner shall not leave the State of Tamilnadu without obtaining prior permission from the trial Court till the disposal of the case;

(iv) the petitioner shall not tamper with the evidence or witness either during investigation or trial;

(v) the petitioner shall not abscond either during investigation or trial;

(vi) on breach of any of the aforesaid conditions, the 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 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]**.

sd/-

02/11/2016

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

VS
TO

- 1 THE JUDICIAL MAGISTRATE, DEVAKOTTAI
- 2 THE CHIEF JUDICIAL MAGISTRATE
SIVAGANGAI DISTRICT
- 3 THE INSPECTOR OF POLICE,
DEVAKOTTAI TOWN POLICE STATION,
SIVAGANGAI DISTRICT
- 4 THE INSPECTOR OF POLICE,
FLOWER BAZAAR POLICE STATION, CHENNAI.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 6 THE OFFICER INCHARGE
DISTRICT JAIL, PUDUKKOTTAI

+1. CC to M/S.V.KANNAN Advocate SR.No.65019

GJM/KM/SAR-III-2.11.16-3P-8C

ORDER
IN

CRL OP(MD) No.20204 of 2016
Date :02/11/2016



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