

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Crl.O.P.No.18037 of 2020

Vairavan.

S/o, Subramaniyan,

73D, Keezhl Vadampokki Street,

Mannargudi-641 001.

...Petitioner/A2

-Vs-

State Represented by

The Inspector of Police,

Thalayamangalam Police Station,

Thiruvarur District.

... Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to direct the Judicial Magistrate No.II, Mannargudi to grant interim custody of the amount of Rs.10,50,000/- (Rupees Ten Lakh Fifty Thousand Only) to the petitioner seized by the respondent police in Crime No.383 of 2020.

For Petitioner : Mr.Swami Subramanian

For Respondent : Ms.M.Prabhavathi

Additional Public Prosecutor

सत्यमेव जयते
O R D E R

The respondent police has registered a case against the petitioner for the offences under sections 273, 328 IPC r/w sections 7 and 20(1) of Cigarette and other Tobacco Products Acts 2003, r/w sections 52 and 59 of Foods Safety and Standards Act 2006 in Crime No.383 of 2020 and the same is pending.

2. It is noted that a sum of Rs.10,50,000/- had been seized by the respondent from the petitioner while interrogating him and accordingly register the case as aforestated against the petitioner.

3. According to the petitioner, he has not committed the alleged offences and he is an innocent person and the case has been falsely foisted against him and the sum of Rs.10,50,000/- had been collected by him from his dealers.

4. Seeking for the interim custody of the abovesaid amount, pending investigation, the petitioner has preferred the petition before the Judicial Magistrate Court, No.II, Mannargudi. The abovesaid petition preferred by the petitioner had been returned by the said Court on 24.08.2020 for the reason "since the money is involved in the offence it will be decided only at the time of trial. Hence returned". Impugning the said order, the present Criminal Original Petition has been preferred by the petitioner.

5. According to the petitioner's counsel pending investigation and trial, the petitioner is entitled to seek the interim custody of the cash or articles seized from the petitioner by the respondent police and the Court below had erred in not entertaining his request on the ground that the same would be decided only during the course of trial. In this connection, he placed reliance on the decision of the Apex Court reported in 2002 (10) SCC 283 (Sunderbhai Ambalal Desai Vs. State of Gujarath with C.M.Mudaliar Vs. State of Gujarat). Considering the principles of law outlined by the Apex Court in the abovesaid decision, it is found that the petitioner would be entitled to seek the interim custody of the cash said to have been seized from him by the respondent, if he is able to justify the retention of the same in accordance with law. In such view of the matter, the Court below is found to have erred in returning the petition filed by the petitioner on the ground that the same would be decided only during the course of trial. In the light of the abovestated decision of the Apex Court, it is found that the impugned order passed by the Judicial Magistrate No.II, Mannargudi is liable to be set aside. In the light of the abovesaid factors and in the interest of justice, I deem it expedient to issue the following directions.

(i) The petitioner is directed to represent the returned petition seeking for the interim custody of the cash involved in the crime before the Judicial Magistrate No.II, Mannargudi within three days from the date of receipt of a copy of this order.

(ii) On such representation, the Judicial Magistrate No.II, Mannargudi is directed to take the petition on file and after inviting the objections of the police and after hearing both the parties, pass appropriate orders with reference to the custody of the cash involved in the crime in accordance with the principles of law outlined by the Apex Court in the decision referred to supra.

(iii) The Judicial Magistrate No.II, Mannargudi is directed to conclude the exercise aforesaid expeditiously without any delay preferably within four weeks from the date of receipt of the representation of the petition by the petitioner. Accordingly, the Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Judicial Magistrate No.II,
Mannargudi.
2. -do- Thro' The Chief Judicial Magistrate,
Thiruvarur.
3. The Inspector of Police,
Thalayamangalam Police Station,
Thiruvarur District.
4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Swami Subramanian, Advocate Sr.37077

Cr1.O.P.No.18037 of 2020

bp[co]
srg 14/12/2020