

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

CRL.O.P.No.20177 of 2020

V.Surendar,
S/o.Vaithiyalingam

.. Petitioner/A1

/versus/

The State rep by,
The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur District.
Crime No.1509 of 2020

.. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail in Crime No.1509 of 2020 pending investigation on the file of the respondent Police.

For Petitioner : Mr.R.Ganesh Kumar

For Respondent : Mr.C.Raghavan

Government Advocate (Crl.Side)

ORDER

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The petitioner, who was arrested and remanded to judicial custody on 13.11.2020 for the offence punishable under Sections 328, 284 IPC r/w 24(1) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act,

2003 or COTPA, 2003 in Crime No.1509 of 2020 on the file of the respondent police, seek bail.

2.The case of the prosecution is that the defacto complainant is residing at Lakshmi Nagar Main Road, Tiruppur District with his family and he is working as Batlock Tailor in M.K.M Knit Fashion Company at Tiruppur. Further the defacto complainant is having a habit of consuming tobacco product namely Hans Tobacco product, which is not ordinarily available as it is banned. On 13.11.2020 at about 9.30 hrs while he proceeding towards Tarapuram Road, Pudur for his personal work, a person who was standing near the bus stop is alleged to have asked the defacto complainant that he is having Hans tobacco packet which is more powerful and the price of a packet was Rs.30/-. The said person took him near a Tata Ace vehicle bearing Registration No.TN 76 P 6078 and sold five packets for Rs.150/-. Further the defacto complainant after consuming felt dizziness and vomiting sensation. Hence the Complaint.

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3.The learned counsel for the petitioner submitted that the petitioner is innocent and he has nothing to do with the alleged offence and has been falsely implicated in this case. The petitioner is the owner of the Tata Ace vehicle, therefore he was arrested by the respondent Police and arrayed as first accused.

He further submitted that during Deepavali festival his driver namely the other accused had a wordy quarrel with a friend of Police personal at Rural Police Station/respondent, which resulted in the present false implication of the petitioner and his driver. The petitioner has no bad antecedents. The petitioner without prejudice to his defence, is prepared to make considerable donation to any charitable Organization or Association. Therefore, he prayed for grant of bail for the petitioner.

4. The learned Government Advocate submitted that the investigation is pending, the seized tobacco products have to sent for analysis and if the petitioner is released on bail, he may abscond, tamper the witnesses and will indulge in the same type of offence. Hence, he vehemently opposed for grant of bail to the petitioner.

5.Considering the rival submissions and the petitioner offering to donate/pay considerable amount to any charitable organization or association, this Court is of the opinion that the petitioner shall be directed to deposit a sum of Rs.75,000/- (Rupees Seventy Five thousand only) as non-refundable deposit through RGS/NEFT in favour of the “The Dean, Rajiv Gandhi Government General Hospital, Chennai, bearing A/c. No.10273425961, State Bank of India,

Park Town (Chennai), 68, Evening Bazaar Road, Chennai, IFSC:SBIN0001856, on such payment and production of proof, he shall be released on bail on condition that the petitioner shall execute 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 Judicial Magistrate No.IV, Tiruppur failing which, the petition for bail shall stand dismissed and on further condition that:

[a] Merely, because the petitioner deposit the said amount, it would not amount to admission of her guilt. Therefore, it is open to the trial Court to deal with the case independently.

[b] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[c] the petitioner shall report before the respondent police daily at 10.30 a.m. until further orders.

[d] the petitioner shall not commit any offences of similar nature;

[e] the petitioner shall not tamper with evidence or witness either during investigation or trial.

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

[g] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioner/s 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]**.

[h] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

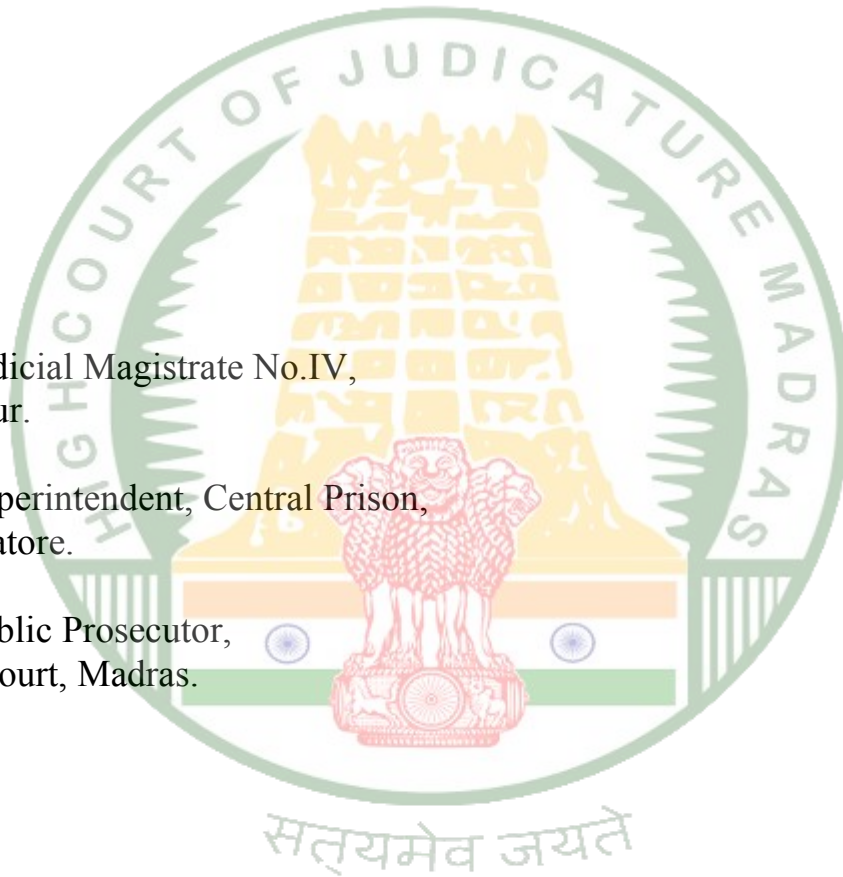
6.With the above direction, this Criminal Original Petition is ordered.

17.12.2020

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To

- 1.The Judicial Magistrate No.IV,
Tiruppur.
- 2.The Superintendent, Central Prison,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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17.02.2020