

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

CrI.O.P.No.1336 of 2021

Shri Laxmi kanta Tolasariya

... Petitioner

Vs.

The Senior Intelligence Officer, Respondent
Directorate of Revenue Intelligence, Hqrs,
7th Floor, Drum Shaped Building,
Indraprastha Bhavan, I.P. Estate,
New Delhi.
(R.R.No.32 of 2020)

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in R.R.No.32 of 2020 on the file of the Respondent.

For Petitioner : Mr. AR.L.Sundaresan, Sr. Counsel

For Respondent : Mr.N.P.Kumar
Spl.P.P. For DRI

ORDER

(The case has been heard through video conference)

Petitioner is the sole accused, who was arrested 29.12.2020 and remanded to judicial custody on 30.12.2020 for the offence punishable under Sections 132 and 135 of the Customs Act, 1962 in R.r.No.32 of 2020 of 2020, seeks bail.

2. The allegation is that, some machineries were imported from 2015 to 2017 by a proprietary concern namely M/s.Rama Engineers, in which, one Yogesh Mandal is the proprietor. While importing the goods, the machineries were undervalued, thereby evaded customs duty to the tune of Rs.4.8 crores. The subsequent investigation reveals that, Yogesh Mandal, was an ex-employee of the petitioner. In fact, the petitioner only imported the goods in the name of M/s.Rama Engineers, also submitted the documents for clearance, and the imported machineries were sent to the petitioner. Alleging that the petitioner had evaded the payment of customs duty to the tune of Rs.4.8 crores, the case has been registered against him.

3.Mr.AR.L.Sundaresan, the learned senior counsel appearing for the petitioner submitted that, admittedly the goods were imported by M/s.Rama Engineers, which is a proprietary concern, owned by one Yogesh Mandal. He would further submit that the petitioner had nothing to do with that Yogesh Mandal, and he has been falsely implicated in this case. Now the authorities also issued a show cause notice under Section 28(4) r/w. Section 124 of the Customs Act, 1962 and adjudication is pending before the concerned authority, the petitioner is ready and willing to appear before the adjudicating authority. It is further stated that the petitioner is not an actual importer as per Section 2 (26) of the Customs Act, 1962, and M/s.Rama Engineers only imported the machineries. Hence, the petitioner cannot be made as an accused in this case. He further submitted that even assuming that the petitioner is a beneficial owner as per the amendment to the Customs Act, the amendment came into effect only from 31.03.2017 after the period of alleged import. The learned senior counsel further submits that the petitioner is languishing more than 40 days under custody. Hence, he prays to grant bail to the petitioner.

4. Mr.N.P.Kumar, the learned Special Public Prosecutor appearing for the Respondent would submit that the petitioner is a habitual offender, and that the petitioner is running several concerns in the name of his employees and importing the goods under valuating the same, thereby evaded the customs duty and also caused loss to the Revenue. He would further submit that during investigation, the proprietor of the company, namely Yogesh Mandal has given a statement that the entire transactions were done by the petitioner. Insofar this case is concerned, the customs duty evaded is Rs.4.8 crores and therefore, he opposed the bail petition and prays this court to impose stringent condition on the petitioner in the event of granting of bail.

5. I have heard and considered the rival submissions made by the learned senior counsel for the petitioner and the learned Special Public Prosecutor for the respondent.

6. Considering the said facts and circumstances, admittedly now a show cause notice issued against the petitioner and the adjudication is pending and there is a serious dispute, as to whether the petitioner is the actual importer. The import was from 2015 to 2017 and that the petitioner is under judicial custody for more than 40 days, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is ordered to be released on bail on condition that **the petitioner is directed to pay sum of Rs.1,00,00,000/- (Rupees One crore only) to the credit of R.R.No.32 of 2020 on the file the Principal Commissioner/Commissioner of Customs, Chennai-II, Customs House, 60, Rajaji Salai, Chennai-600 001, thereafter, to execute a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties each for a like sum to the**

satisfaction of the learned Additional chief Metropolitan Magistrate (E.O.I), Egmore, Chennai-8, and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) **the petitioner, on his release from prison, shall stay at Delhi and report before the respondent daily at 10.30 a.m., for a period of one week and thereafter as and when required for interrogation;**

(d) the petitioner shall not commit any offences of similar nature;

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

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

(g) on breach of any of the aforesaid conditions, the learned Judicial 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];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

7. With the above directions, this Criminal Original Petition is ordered.

-sd/-
09/02/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE (E.O.I), EGMORE, CHENNAI-8.

2 THE SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE, HQRS,
7TH FLOOR, DRUM SHAPED BUILDING,
INDRAPRASTHA BHAVAN, I.P. ESTATE,
NEW DELHI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE OFFICER INCHARGE
SUB JAIL, SAIDAPET, CHENNAI.

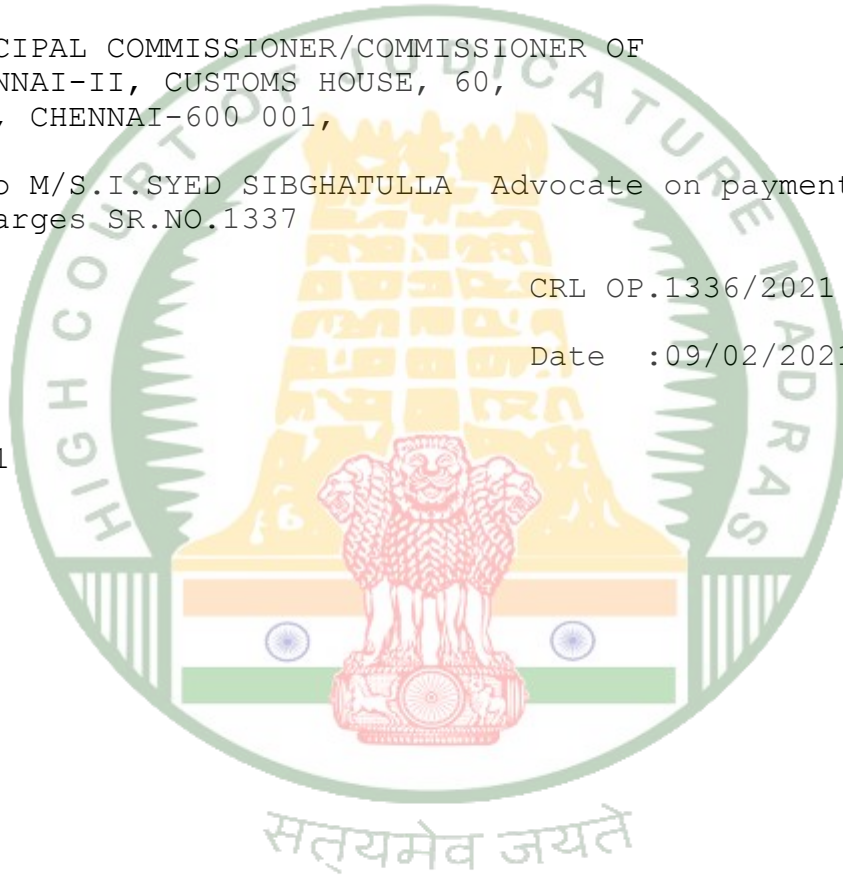
5 THE PRINCIPAL COMMISSIONER/COMMISSIONER OF
CUSTOMS, CHENNAI-II, CUSTOMS HOUSE, 60,
RAJAJI SALAI, CHENNAI-600 001,

+3 CC to M/S.I.SYED SIBGHATULLA Advocate on payment of
necessary charges SR.NO.1337

CRL OP.1336/2021

Date :09/02/2021

TA-09/02/2021



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