

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
26.07.2021	29.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.10925 OF 2021

Nazir Hussain

.. Petitioner

- Vs -

The Sr. Intelligence Officer
Special Intelligence & Investigation Branch
Chennai III Commissionerate, Custom House
III Floor, Krishna Block
Custom House, Chennai 600 001.

.. Respondent

Criminal Original Petition filed u/s 438 Cr.P.C. praying this Court to release the petitioner on bail, in the event of arrest by the respondent in File No. S.No.Misc.142 of 2021 SIIB on the file of the Sr. Intelligence Officer, Special Intelligence & Investigation Branch, Chennai III Commissionerate.

For Petitioners : Mr. T.Sivananthan

For Respondent : Mr. N.P.Kumar, Spl. PP

ORDER

The present petitioner has been filed by the petitioner seeking enlargement on anticipatory bail, in the event of arrest by the respondent in File No. S.No.Misc.142 of 2021 SIIB.

2. It is the case of the petitioner that he is an exporter of cobble stones and in furtherance of the said business, he filed shipping bills for shipment of cobble stones through CHA M/s.RR Logistics on 14.4.21 for export of cobble stones. According to the petitioner, a third party had done the stuffing outside the Container Freight Station (for short 'CFS') and the petitioner had appended his signature on the documents, without knowing the actual items, which had been stuffed in the containers. After obtaining the requisite permission, the trailer carrying the container left the CFS premises on 26.4.21 to the Harbour after inspection by the Customs Officers and sealing the container. However, on 28.4.21, the officers of the respondent detained the container at the Harbour and on 29.4.21, the CFS inspection team was called upon and it was found that the seal on the container was intact. On the opening of the container, it was found to contain 224 wooden logs of various grades along with cobble stones and

subsequently, Wild Life Inspector had inspected the said logs on 6.5.21 and certified the same to be Red Sanders Logs of various grades, the value of which is yet to be arrived at.

3. It is the further case of the petitioner that pursuant to the detention of the container, the mahazar, which would have been drawn, is yet to be served on the petitioner relating to the seized goods and, therefore, the petitioner is not aware of the allegations. It is the further stand of the petitioner that the goods confiscated are not exclusively prohibited goods and that the value of the goods are also not so high. However, due to the pandemic situation prevailing across the country, the petitioner had moved the Principal Sessions Judge, Chennai, by filing Crl. M.P. No.10238/21, which was dismissed on 2.6.21 and the further petition for the very same relief in Crl. M.P. No.10737/21 was withdrawn by the petitioner on 17.6.21. Apprehending arrest at the hands of the respondent, more specifically during the present pandemic situation, which would be detrimental to his safety, the present petition has been filed.

4. Learned counsel for the petitioner submitted that the petitioner is not aware of the stuffing of the red sanders logs along with the cobble stones and that he had signed in the shipping bills purely on the basis of the trust, which he reposed in the third party, which had done the stuffing and that the petitioner is a law abiding citizen and is ready and willing to co-operate with the respondent.

5. In fact, it is the submission of the learned counsel for the petitioner that though summons were issued to him by the respondent for his personal appearance on three occasions, yet the petitioner did not appear for the reason that due to threat or compulsion, he may be made to give incriminating statements, which would have major ramifications and only for the said purpose the petitioner had avoided appearing before the respondent. However, it is submitted that if this Court directs the petitioner to appear before the respondent and co-operate with the investigation, the petitioner would scrupulously comply with the said condition and would cooperate in the investigation by the respondent.

6. Per contra, learned Special Public Prosecutor appearing for the respondent submitted that the red sanders logs, which is sought to be exported by the petitioner is a prohibited item as per the Central Government classification. It is the further submission of the learned Special Public Prosecutor that though the petitioner was called thrice by issuance of summons for appearance for enquiry before the respondent, the petitioner has not adhered to the said summons and had kept silent, which clearly shows that the petitioner is trying to evade enquiry. It is the further submission of the learned Special Public Prosecutor that the anticipatory bail petition was dismissed by the Principal Judge on the ground that the goods are prohibited goods. It is the further submission of the learned Special Public Prosecutor that it is the petitioner who has signed the Shipping bills and now the petitioner cannot feign ignorance and claim that he was not aware of the products that were stuffed in the container, by shifting the blame on the third party, which is also very vague as the petitioner has not stated anything about the third party.

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7. It is the further submission of the learned Special Public Prosecutor, which is a reiteration of the additional counter filed by the respondent, that in

view of the non-appearance of the petitioner before the respondent, this Court had directed the petitioner to appear before the investigating officer, vide its order dated 5.7.2021 and in pursuance to the said order, the petitioner appeared before the respondent for enquiry. On 8.7.21, at about 11.00 a.m., when the petitioner appeared for enquiry, the respondent had enquired about the sequence of events relating to the concealment of red sanders logs along with the cobble stones, though the petitioner has spoken of the various acts that were performed by him relating to the registration of the shipping bill, the petitioner had further gone on to state that he received the red sanders logs from one Penchiliah. However, even after persistent and pointed questions, the petitioner has not revealed any particulars about the said individual. The petitioner had even gone on to state that the relevant details pertaining to the said Penchiliah are not readily available with him and that he would produce and divulge the same the next day. However, when the petitioner appeared before the respondent on 9.7.21 also, the petitioner had not disclosed any information about the said Penchiliah such as address, phone number, etc., The petitioner had given evasive answers regarding the identity of the said Penchiliah and, thereafter, the petitioner had requested to go for lunch and the petitioner was

permitted by the respondents to go for lunch and come back for enquiry. However, neither the petitioner returned nor received the calls when contacted on his mobile. Equally, the counsel for the petitioner also did not respond to the calls from the respondent.

8. It is the submission of the learned Special Public Prosecutor that the petitioner is part of an international smuggling racket pertaining to smuggling of red sanders and intentionally the petitioner is hiding the details pertaining to the smuggling racket as also the details of Panchiliah. Further, the petitioner has spoken about one Ran Hong Bin, but equally has not revealed any details about the said individual as well.

9. It is the further submission of the respondent that the petitioner almost successfully succeeded in smuggling the red sanders logs into the container for onward transmission, but for the timely action by the respondent, the smuggling activity of the petitioner was intercepted. It is the submission of the learned Special Public Prosecutor that if the stand of the petitioner as to his innocence in the whole deal is true, the petitioner would have definitely appeared before the

respondent even during the month of April, 2021 itself when the container was seized. However, his non-appearance for quite a long time and also his reluctance to divulge the details of the individuals involved in the said act would speak volumes about his innocence in the commission of the offence. It is the further submission of the learned Special Public Prosecutor that even according to the petitioner, he had sought legal advice even to appear before the respondent and answer the queries. If the petitioner had nothing in his closet, there was no occasion for the petitioner to seek legal advice, even at the very first instance and the act of the petitioner in obtaining legal advice definitely has to be interpreted in a different fashion, while considering his case for anticipatory bail. It is therefore the stand of the respondent that but for the details already with the respondent, the petitioner has not provided the respondent with any iota of information relating to the persons involved in the smuggling racket. It is therefore submitted that if the petitioner is enlarged on anticipatory bail, the chances of the petitioner trying to interfere with the investigation and influence the witnesses cannot be ruled out and, therefore, the respondent vehemently opposed for grant of anticipatory bail to the petitioner.

10. This Court paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

11. It is the admitted case of the petitioner even that he had signed the shipping bills relating to the shipment of cobble stones, for which stuffing of the same into the container was done by a third party. However, it is to be pointed out that the petitioner has not divulged the name of the third party, who had done the stuffing. The shipping bills were, thereafter, collected by the petitioner for submission once the container was sealed by the CFS. The interception had happened after the sealing of the container and it is the admitted case of the parties that the seal was intact when the interception was made by the respondent. Opening of the container in the presence of the CFS revealed the red sanders logs, which were found stuffed along with the cobble stones.

12. It is not in dispute that the owner of the materials, which were found in the container, as per the shipping bills, is the petitioner. However, the only claim of the petitioner is that he had signed the shipping bills, but was not aware

of what was stuffed inside the container by the stuffing agent and he was under the premise that the stuff inside the container was cobble stones. If the stand of the petitioner that he is in no way connected with the prohibited seized material, the course that is open to the petitioner is to subject himself for enquiry and give all the details before the respondent for them to find out the truth of the matter and nab the culprit. However, from the counter of the respondent and the submissions advanced by the respondent, it is evident that the petitioner has not participated properly in the enquiry and given the details sought for by the respondent.

13. Further, it is the categorical stand of the respondent in their counter that the petitioner had spoken about one Penchiliah, however, during the enquiry, the petitioner has not given any concrete details about the contact of the said Penchiliah nor the address/phone number of the said individual. Merely informing about one Penchiliah as the person, who had given the red sanders logs without divulging any further details would not absolve the petitioner from the crime. If really the petitioner is in no way connected with the red sanders logs, the petitioner ought to have participated fully in the enquiry and provided

the details sought for by the respondent. However, the reply of the respondent reveal that the petitioner has not participated in the enquiry, though the enquiry was conducted on two days and that on the second day, the petitioner went out for lunch and did not return back and inspite of repeated calls from the respondent, the petitioner did not answer the said calls.

14. Further, one other important fact that emerges from the reply of the respondent, which is not controverted by the petitioner is the fact that during the enquiry, to a pointed question from the respondent as to the person from whom the petitioner had sourced the red sanders logs, the petitioner has stated that he had received them from one Penchiliah. The petitioner had averred in the petition that he was not aware of red sanders logs having been stuffed inside the container and that he had signed the shipping bill without seeing the materials inside the container. If that be the case, the contention of the respondent that the answer by the petitioner that he had sourced the red sanders logs from the said Penchiliah stares writ large on the face of the petitioner, which requires a deeper investigation by the respondent. This Court cannot lose sight of the fact that the petitioner having not revealed any information about the said Penchiliah,

who is said to be the source of the red sanders logs, the respondent must conduct a full fledged investigation to find out the real culprit in the issue and at this point of time, allowing the prayer of the petitioner for anticipatory bail, would work hardship to the respondent in conducting the investigation as the interference by the petitioner in the investigation by the respondent cannot be ruled out. Therefore, acceding to the request of the petitioner for enlarging him on anticipatory bail at this point of time would be detrimental to the investigative process and in the above backdrop, this Court is not inclined to accede to the request of the petitioner.

15. For the reasons aforesaid, the relief sought for by the petitioner cannot be granted and, accordingly, this criminal original petition is dismissed.

29.07.2021

Index : Yes / No

Internet : Yes / No

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To

1. The Sr. Intelligence Officer
Special Intelligence & Investigation Branch
Chennai III Commissionerate, Custom House
III Floor, Krishna Block
Custom House, Chennai 600 001.

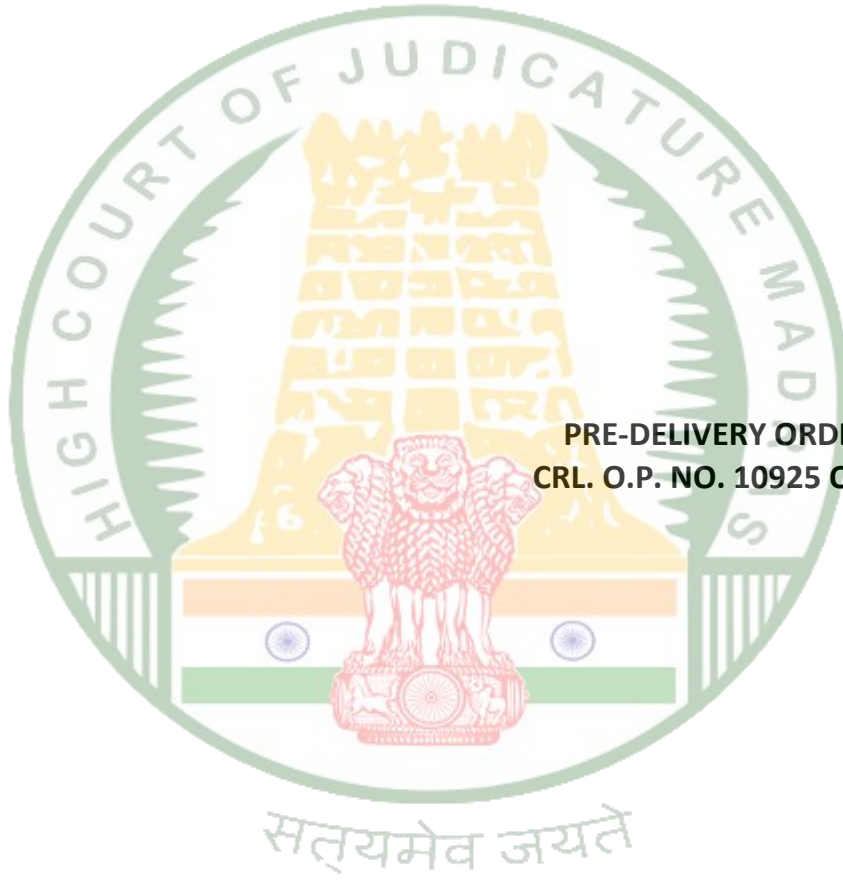
2. The Special Public Prosecutor
DRI Cases, High Court
Chennai.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
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