



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

Date : 01/09/2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

Crl.O.P. (MD) Nos.11944 to 11950 of 2021

Abdulkayuom	... Petitioner/ Accused No.6 in Crl.O.P. (MD) No.11944 of 2021
Syed Mohammed Buhari	... Petitioner / Accused No.7 in Crl.O.P. (MD) No.11945 of 2021
Gopi	... Petitioner / Accused No.4 in Crl.O.P. (MD) No.11946 of 2021
Manikandan	... Petitioner / Accused No.2 in Crl.O.P. (MD) No.11947 of 2021
Rizwan Mohamed	... Petitioner / Accused No.5 in Crl.O.P. (MD) No.11948 of 2021
Selvakumar	.. Petitioner / Accused No.3 in Crl.O.P. (MD) No.11949 of 2021
Vijay	... Petitioner / Accused No.1 in Crl.O.P. (MD) No.11950 of 2021
versus	

The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Trichy.

F.No.DRI/CZU/TRY/VII/48/ENQ-01/INT-01/2021 ..Respondent/Complainant
in all the cases.

Petitions filed under Section 439 Cr.P.C. seeking to enlarge the
petitioners on bail in connection with the case in
F.No.DRI/CZU/TRY/VII/48/ENQ-01/INT-01/2021 on the file of the
respondent.

For Petitioner
in Crl.O.P. (MD)
Nos.11944/21
and 11949/21 : Mr.S.Deenadhayalan
Crl.O.P (MD) Nos.11945/21: Mr.S.Vijayakumar
and 11950/21

<https://hcservices.courts.gov.in/Pcse/MDs/> Crl.O.P. (MD) No.11946/21: Mr.K.Sivabalan



Crl.O.P(MD) Nos.11947/21: Mr.S.Vijayakumar
and 11948/21 for Mr.M.Jesu Paulraj

For Respondent : Mr.C.Arul Vadivel @ Sekar
Special Public Prosecutor
In all Cases

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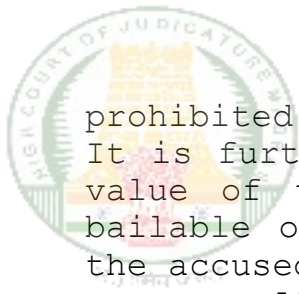
COMMON ORDER

The petitioners/A1 to A7, who were remanded to judicial custody on 20.07.2021, for the offence punishable under Sections 135(1)(a) and 135(1)(b) of the Customs Act, 1962, in the case registered by the respondent in F.No.DRI/TRY/CZU/VII/48/ENQ-01/INT-01/ 2021, seek bail.

2. Though all the accused filed separate petition for bail, the grounds raised in the petition are verbatim the same in all the petitions. Therefore, all the petitions are taken up together and disposed of by a common order.

3. The case of the prosecution is that upon the secret information on 18.07.2021, the respondent Intelligence Officers intercepted the accused 1 to 4, who arrived at Trichy by the flight 1x614 from Sharjah and verified them as to whether they have declared any dutiable item or paid any custom duty. After knowing that no such declaration or duty paid by them, the Officers informed that they have to search accused Nos.1 to 4. After conducting search, they have recovered 1000 grams of gold from the first accused, valued at Rs.49,00,000/-, in a pasted form, concealed by the first accused in his rectum to avoid payment of customs duty. Similarly, 1000 grams of gold, valued at Rs.49,00,000/-, were recovered from the 2nd accused and 660.250 grams of gold valued at Rs.32,35,225/- from 3rd accused and 660.250 grams of gold valued at Rs.32,35,225/- from the 4th accused and totally 3321.500 grams of gold, valued at Rs.1,62,75,350/- from the accused persons and the same were seized under Sections 111(d), 111(i), 111(1) and 111(m) of the Customs Act. Accused Nos.1 to 4 have admitted the guilt and gave their statement under Section 108 of Customs Act, 1962 (hereinafter referred to as "the Act"). In the meanwhile, another team of DRI officials arrested accused 5 to 7, who were waiting nearby the airport to receive the passengers, who were carrying the smuggled gold and they got the photos of accused Nos.1 to 4 to receive them. They were also arrested and their statements were also recorded. From the statement of the accused persons, DRI officials came to understand that A8, who is also a customs officer, facilitated the passengers to clean the concealed gold without declaration. Hence, the case.

4. The learned counsel for the petitioners submitted that the importation of gold is not prohibited under law. As per Section 112 of the Customs Act, in the case of dutiable goods, other than



prohibited goods, penalty for improper importation of goods is 10%. It is further submitted that as per Section 135 of the Act, if the value of the gold detected is below fifty lakhs, then, it is a bailable offence. In this case, the gold has been recovered from the accused Nos.1 to 4 separately, which are as follows:

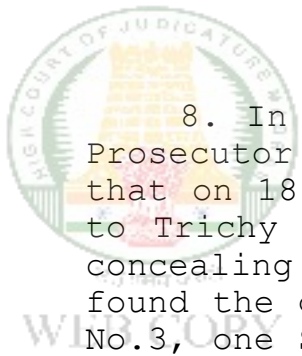
- A1 - 1000 grams of gold worth
Rs.49,00,000/-
A2 - Rs.49,00,000/- worth of gold
A3 - 660.250 grams gold
(worth Rs.32,35,225/-)
A4 - 660.250 grams gold
(worth Rs.32,35,225/-)

But, the respondent had pooled the value of gold seized from the accused persons to make the offence as Non-bailable and remanded them to judicial custody.

5. The learned counsel for the petitioners further submitted that when there is a specific information on the smuggling of gold, the custom officer had a reasonable belief that the passengers/accused, against whom the information has been passed on, needs physical frisking or search. Therefore, the officers ought to have resorted to the procedures laid down under Section 103(1)(2) of the Act. But, in this case, the said procedures were not followed. Further, the arrested accused persons, before search, were not produced before the concerned Magistrate and therefore, the recovery is suspicious and unlawful.

6. The learned counsel for the petitioners submitted that insofar as accused Nos.5 to 7 are concerned, they were waiting in a Taxi Stand nearby the Airport and they were arrested as if they have been waiting to receive accused Nos.1 to 4, based on the statements given by accused Nos.1 to 4. But, the said statements were retracted by accused Nos.1 to 4. Therefore, the remand of accused Nos.5 to 7, based on the retracted statement, is not proper. Further, accused Nos.5 to 7 were not in possession of any gold and they have not filed any declaration form. Therefore, no offence is made out as against the accused Nos.5 to 7. Further, they are not carriers and therefore, they cannot be prosecuted for the offence under Sections 135(1)(a) and 135(1)(b) of the Customs Act, 1962. Before arresting A5 to A7, the procedures under Section 108 of the Customs Act ought to have been followed, but, the same has not been done.

7. The learned counsel appearing for the petitioners further submitted that accused Nos.1 to 4 travelled in the flight IX614 from Sharjah to Trichy on 18.07.2021 and they have been arrested by the Customs Officials on the same day, but, they have been remanded to the judicial custody only on 20.07.2021, ie. beyond the period of 24 hours from the arrest, which is illegal. Therefore, the illegal



8. In response to these submission, the learned Special Public Prosecutor submitted that the respondent got a specific information that on 18.07.2021, the accused Nos.1 to 4, travelling from Sharjah to Trichy in flight IX614, have smuggled gold in a pasted form by concealing in their rectum. The respondent intercepted them and found the gold in a pasted form concealed in their rectum. Accused No.3, one Selvakumar, stated that he could not hold the gold in his rectum and ejected the same in the aircraft toilet itself. After consistent enquiry, accused No.3 has produced the gold taken by him from the toilet and the remaining gold were recovered from a chocolate pouch. During the course of investigation, the respondent also found that one Dharmendra Singh, Inspector of Customs, who was on duty, had facilitated the accused to clear the concealed goods without declaring to the customs and without payment of duty and he is arrayed as accused No.8. Accused No.8 had also frequent talks with accused Nos.1 to 4 as well as with accused Nos.5 to 7. Accused Nos.5 to 7, who were waiting in the arrival area near the Taxi Booking Counters, chatted with accused Nos.1 to 4. Accused Nos.5 to 7 also received the photographs of accused Nos.1 to 4 through WhatsApp. They have also admitted the same during the enquiry.

9. The learned Special Public Prosecutor further submitted that the recovery of 5 nos. of rectangular shaped gold biscuits, totally weighing 3321.500 grams, were verified through an Appraiser on 19.07.2021 and they were certified as 24 carat pure gold. The same was recovered under a mahazar on 19.07.2021 and the value of the said gold is Rs.1,62,75,350/-. He further submitted that it is not correct, that all the gold recovered independently from A1 to A4 are pooled together to make it as non-bailable offence, for the following reasons:

(i) Photograph/passport details of accused Nos.1 to 4 were recovered from the mobile phones of accused Nos.5 to 8.

(ii) In their respective voluntary statements dated 19.07.2021 given under Section 108 of the Act, accused Nos.1 to 4 had accepted their role as a carrier of gold for monetary benefits.

(iii) The presence of photographs of A1, A3 & A4 in the mobiles of co-accused A5 & A6 and presence of photographs/passport details of A1, A3 & A2 and detailed chat in the mobile phone of A8 indicates that all the accused were acting as a gang and the petitioners herein were a part of the gang.

(iv) The petitioners cannot be considered as independent smugglers of gold, as they have acted as a part of the gang and as one of the receivers of the smuggled gold.

(v) All passengers (A1 to A4) have mentioned one common name, Sheik, who had sent them from Dubai, asked them to carry the gold in paste form, conceal in their rectum and to hand it over to the receiver arranged by him.

(vi) The smuggled gold had been purposely transferred into paste for easy concealment in rectum and for smuggling without being



(vii) The type of contraband, type of packing and method of concealment are same for all the four accused persons (A1 to A4). All these prove that the contraband is a single consignment (divided into four parts), pertaining to one person and he had used four persons (A1 to A4) for the sake of convenience and easy transportation. The total value of the consignment is Rs.1,62,75,350/-.

(viii) Therefore, the petitioners herein had acted as one of the gang in smuggling of the gold in paste form.

10. The learned Special Public Prosecutor denied the contention of the learned counsel for the petitioners that the importation of gold is not prohibited under law. Import of gold in the form of sheets, plates, strips, tubes and pipes are restricted and allowed only through nominated Agencies as notified by RBI (in case of Banks) and DGFT (for other agencies), by Notification of Ministry of Commerce & Industry in Notification No.36/2015-2020, dated 18th December 2019. Moreover, in this case, accused Nos.1 to 4 have concealed the gold in a paste form and with an intention to smuggle the gold by concealing in their rectum, not to declare before Customs Authorities and to clear the same without payment of applicable duty. Import of all dutiable articles by a passenger in his baggage is "Restricted" and is subject to the fulfillment of the conditions imposed under the Customs Act, 1962, the Baggage Rules, 2016, as amended and the Foreign Trade (Exemption from Application of Rule in Certain Cases) Amended Order, 2017. As per Section 77 of the Customs Act, 1962, the owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the concerned officer, but, the petitioners herein, namely, A1 to A4, did not do so. Further, the Hon'ble Supreme Court of India, **in Sheikh Mohd Omer vs. Collector of Customs, Calcutta**, reported in **1983(13)ELT 1439 (SC)** and **Om Prakash Bhatia vs. Commissioner of Customs**, reported in **2003 (155) ELT 423 (SC)** has clearly held that any prohibition applies to every type of prohibitions which may be complete or partial and even a restriction on import or export is to an extent a prohibition.

11. With regard to the illegal detention of the petitioners on 18.07.2021, the learned Special Public Prosecutor submitted that the accused persons were enquired on 18.07.2021, the smuggled gold were seized on 19.07.2021, they were arrested on 20.07.2021 and remanded to judicial custody on the same day.

12. The learned Special Public Prosecutor strongly opposed for grant of bail to the accused persons, particularly, accused No.7, stating that he has often changed his address and did not co-operate for the enquiry and also did not furnish the PIN Number for the mobile phone, recovered from him. Therefore, he prayed for dismissal of these petitions.



13. This Court paid its anxious consideration to the rival submissions and also perused the materials placed before this Court.

14. Accused Nos.1 to 4 were passengers, who travelled from Sharjah to Trichy by flight No.1X614 on 18.07.2021. From all the accused persons, gold in a pasted form, which was concealed in their rectum, was recovered. As pointed out by the learned Special Public Prosecutor, the *modus operandi* of all the accused appears to be similar. But, the accused Nos.1 to 4 were only carriers. The main accused are yet to be apprehended. For some meagre amount, they have acted as carriers and they have been arrested by the respondent. The other accused, namely, accused Nos.5 to 7, have also participated in the offence knowingly or unknowingly. The photographs of A1 to A4 were also available in the cell phones of A5 to A7 and the Inspector of Customs/accused No.8, who was on duty, has also facilitated the accused to smuggle the gold. Such an organized crime cannot be done individually and there must be a network behind this offence in abroad as well as in India. If there is any network, it should have been unearthed by having the accused persons in police custody. Though the petitioners have been remanded on 20.07.2021, the respondent has not taken any steps to take them to police custody to find out the network behind this offence.

15. Considering the period of incarceration and the failure on the part of the respondent in having the custody of the petitioners and the fact that the petitioners have only acted as carriers, this Court is inclined to grant bail to petitioners 1 to 6 with stringent conditions, for enabling the Investigating Agency to find out the network and the offenders in abroad as well as in India.

16. Though a specific objection has been taken by the learned Special Public Prosecutor that the accused No.7 has not furnished the PIN number of his mobile phone and his data could not have been retrieved from his mobile and that apart, he is not having a permanent address, this court is inclined to grant bail to the accused No.7 with stringent conditions.

17. Accordingly, all the Criminal Original Petitions are ordered. Accused Nos.1 to 6 are directed to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each, with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Trichy and **accused No.7 is directed to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only), with two sureties of Government Servants or reputed persons each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Trichy** and on further conditions that:

[a] the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy

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of their Aadhar card or Bank pass Book to ensure their identity.

[b] accused Nos. 1 to 6 shall co-operate for the enquiry and appear before the respondent daily at 10.30 a.m. until further orders.

[c] accused No.7 shall co-operate for the enquiry and appear before the respondent daily twice, i.e. morning at 10.30 a.m. and evening at 5.30 p.m. until further orders.

[d] the petitioners/accused 1 to 7 shall not abscond either during investigation or trial.

[e] the petitioners/accused 1 to 7 shall not tamper with evidence or witness either during investigation or trial.

[f] 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 petitioners 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]**.

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

If the petitioners are not co-operating for the enquiry, it is open to the respondent to move an application for cancellation of bail.

sd/-
01/09/2021

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/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE NO.I, TRICHY.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.
3. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

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4. THE SENIOR INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE,
TRICHY.

5. THE SPECIAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+4. CC to Mr.S.Deenadhayalan, Advocate SR.Nos.5832,5835,5833 & 5840
+2CC TO Mr.S.Vijayakumar, Advocate, Sr No.5836 & 5841
+1CC TO MR.K.Sivabalan, Advocate, SR No.5837
+2CC TO Mr.M.Jesu Paul Raj, Advocate, Sr No.5838 & 5839

ORDER IN

Crl.O.P. (MD) Nos.11944 to 11950 of 2021

Date :01/09/2021

OGY

MS/PN/SAR-4/01.09.2021/8P.15C