IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Fourth day of January Two Thousand Twenty Two

PRESENT

The Hon`ble Mrs Justice T.V.THAMILSELVI

CRIMINAL ORIGINAL PETITION No.450 of 2022

S.SAKTHIVEL [PETITIONER / ACCUSED]

Vs

THE STATE REP B Y [RESPONDENT]
THE SUPERINTENDENT OF CUSTOMS,
THE OFFICE OF THE CHIEF
COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE,
ROOM NO.K-307, CHENNAI.
(F.NO.S.MISC.366/2021 SIIB)

For Petitioner : M/S.V.MANOHAR Advocate

For Respondent : MR.N.P.KUMAR Special Public Prosecutor for customs

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest for the alleged offence under Section 407 of IPC in F.No.S.Misc.366 of 2021 SIIB, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner is Managing Director of Olympic Warehouse Private Ltd., Chennai 103 and it is Licensed Bonded Warehouse running from the year 2012 without any complaint of whatsoever. Thereby the Customs authority regularly place their seized goods and unpaid custom duty related articles in petitioner's warehouse. Frequently such goods are being handed separately by conducting periodic inventory and submission of monthly statement with regard to said custom bonded goods are being done. In such event as per the mandate the specified goods were released based on the release order. Thereafter the petitioner has no obligation to follow the goods since the goods was not at all owned by the petitioner and he only acted as guardian for a specified period as per the direction from the Customs Authority. In such event the petitioner cannot be attributed with any default or dereliction in the matter of Transit of specified goods. Leaving all issues the

respondent not only harassing the petitioner and also fix the responsibility on the goods and its value without any justification and even thereafter to arrest the petitioner for the lapse on the part of the petitioner by suppressing the reality and the truth behind the issue. The officials of the petitioner are being tortured to procure the petitioner oneway or the other as if the petitioner committed the offence and trying to extract confession that the petitioner is responsible to the entire episode to cover up the commissions and omissions with the office of the customs and to rescue the officers who are all behind the scene. Hence this case.

3. The learned counsel appearing for the petitioner submitted that the petitioner has not committed any offence as alleged by the prosecution and he has been falsely implicated in this case. Hence, he prays for grant of anticipatory bail.

4. The learned Special Public Prosecutor submitted that the petitioner to carry out further investigation in this matter, the import cargo pertaining to M/s.Empire Traders (IEC-AAIFE2943E) under BE No.6670171/14.12.2021 was detained and summons to the importer M/s.Empire Traders has been sent. But so far there is no response from the importer and importer address also fake one. Hence, he vehemently opposed to grant anticipatory bail to the petitioner.

5. Considering the facts and circumstances of this case, that the learned Special Public Prosecutor filed counter it reveals that:

"5. The respondent / complainant submits that K.Devendhiran, Partner of M/s.Srivaari Logistics voluntarily appeared before SIIB in connection with the goods pertaining to M/s.Omkara International and inter alia stated that they have not received any bonded goods from M/s.Olympic Warehouse Pvt Ltd from 01.06.2021 to till date; that they will not accept any goods from any other warehouse; that they will accept goods only from the Container Freight Stations; that he did not know why M/s.Olympic Warehouse Pvt Ltd stated their name; that no entries were made in their Bond Register / Insurance Register that the goods have been received by them; that they did not issue any Space Certificate / NOC that expressing their interest to receive the goods; that they did not issue any letter / certificate or any other document with regard to the acceptance of goods from M/s.Olympic Warehouse Pvt Ltd. or M/s.Omkara International; that they are hearing the name M/s.Omkara International for the first time; that they did not do any business with the said company till now; that it appears that the said entry in the Transfer Bond was fraudulently entered by some unscrupulous persons without their knowledge; that they are no ways concerned with the goods imported by M/s.Omkara International.

6. The Respondent / Complainant submits that Shri.A.Rameshkumar, General Manager, M/s.Olympic Warehouse Pvt Ltd to appear before SIIB on 10.12.2021 and in his voluntary statement inter alia stated that

he is working as General Manager in the Public Bonded Warehouse M/s.Olympic Warehouse Pvt Ltd and Shri S.Sakthivel viz., the Petitioner herein is the Managing Director and owner of their company; that once they get the Transfer Bond order, they generate a gate pass after receiving all the dues from the party and at the exit gate, security guard will verify the gate pass and makes a corresponding entry in the Outward cargo movement register and the cargo will be allowed to move to the destination; that he don't know why gate pass was not generated for the said cargo; that he don't know why there is Nil pass number in Cargo Outward register entry; that he don't have any mala fide intention and he didn't give any instruction to the security guard to release the cargo without gate pass; that they didn't track about the cargo movement and not verified whether Cargo was reached the public bonded warehouse M/s.Srivaari Logistics or not; that he can't take any major decisions related to the company; that the Managing Director and authorized signatory S.Sakthivel, the petitioner herein is the right person to be questioned about this incident.

7. The Respondent / Complainant submits that the summons to the importer M/s.Omkara International and to the Managing Director of M/s.Olympic Warehouse Pvt. Ltd were issued. The Managing Director of M/s.Olympic Warehouse Pvt Ltd Shri Sakthivel.S has appeared on 14.12.2021 inter alia he stated that he is the Managing Director and they don't know the importer and on behalf of M/s.Omkara International, Mr.Kuljeet Singh Malik has communicated with their GM and his contacted No. was 9131006463; Vehicles TN52H7350 and MP05G 8421 were used to move the cargo from their warehouse on 29.07.2021; they had released the cargo based on the permission given in the Transfer Bond No.945 / 28.07.2021 by the Bonds officials and they had neither taken permission from the concerned Bond officer for preventive supervision nor collected one-time-lock seal from the bond officer; they thought that the customer was genuine and cargo would reach the destination M/s.Sreevari public bonded warehouse; that Importer had arranged the transport facility and they didn't have the E-way bill; he accepted that for the cargo pertaining to the BE No.4373605 / 18.06.2021, they have not generated the gate pass; the importer has come for the delivery of goods in the late night after working hours and their office staff were not available and so without generating the gate pass cargo was allowed to move out; they don't have any mala fide intention and it was their mistake to not to follow the customs procedures; All these mistakes happened due to the negligence of their staff in the day to day activities; they didn't track about the movement of the cargo; they accepted their mistake that they had not followed the customs procedures; they are ready to follow the department's instructions in this case.

8. ------- To carry out further investigation in this matter, the import cargo pertaining to M/s.Empire Traders (IEC-AAIFE2943E) under BE No.6670171 / 14.12.2021 was detained and summons to the importer

M/s.Empire Traders has been sent. But so far there is no response from the importer. -----

11. The Respondent / Complainant submits that in terms of Section 135 of the Customs Act, 1962, if any person in relation to any goods, which either having the market price of which exceeds one crore of rupees or the evasion or attempted evasion of duty exceeding fifty lakh of rupees, in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or is in any way concerned in removing any goods which he knows or has reason to believe are liable to confiscation under Section 111 or Section 113, as the case may be, he shall be punishable with imprisonment for a term which may extent to seven years and with fine. In the present issue, the imported goods, having a declared value of Rs.1,24,43,656.76 on which the customs duties to have been paid to the government exchequer to the tune of Rs.63,71,152/- were established to have been removed improperly from the warehouse owned by the petitioner herein and therefore in terms of provisions of Section 111(j) of the Customs Act, 1962, these goods are liable for confiscation. The investigation to find out the mastermind of the offence is under progress and yet to be concluded."

it needs detailed investigation, if he released on bail he may abscond and tamper the evidence, this Court is not inclined to grant anticipatory bail to the petitioner.

6. Accordingly, this Criminal Original Petition is dismissed.

-sd/-
24/01/2022

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 SUPERINTENDENT OF CUSTOMS,
THE OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, ROOM NO.K-307, CHENNAI.

2 THE SPECIAL PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1CC to M/S.V.MANOHAR Advocate on payment of necessary charges
SR.No.1061

CRL OP.450/2022

Date :24/01/2022

CSK 31/01/2022