IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.06.2022

Pronounced on : 08.06.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 12680 of 2022

Sithik Gani
S/o.Abdul Rahman ..Petitioner

Vs.

The State,
Rep by its Deputy Director,
Directorate of Revenue Intelligence,
Regional Unit,
1103, Trichy Road, Coimbatore – 641 018. ..Respondent

PRAYER:

Criminal Original Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in F.No.DRI/CRU/VIII/48/ENQ-1/INT-6/2020-CBE on the file of the respondent.

For Petitioner : Mr.Nithyaesh Natraj

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor for DRI

ORDER

The petitioner/A2, who was arrested and remanded to judicial custody on 20.04.2022 for the offence punishable under Sections 111(d)(1) and (m) of Customs Act, 1962 r/w Section 135 of Customs Act, 1962 in F.No.DRI/CRU/VIII/48/ENQ-1/INT-6/2020-CBE on the file of the respondent, seeks bail.

2. The case of the prosecution is that M/s.Southern Impex, Export Oriented Unit, engaged in importing unprocessed betel nuts of foreign origin, crushing them at their factory and exporting the same, were clandestinely diverting their imported goods, i.e., betel nuts of foreign origin without payment of duty into the domestic market, in contrary to the rules and conditions laid down for such 100% Export Oriented Unit. When the respondent visited the processing factory, they have noticed two lorries bearing Registration Nos. TN 52 C 9399 and TN 52 L 0806 fully loaded with sacks from the factory. On enquiring the proprietor of the unit about the contents of the snacks loaded in the lorries, it was informed to them that they were all betel nuts loaded for dispatch in the domestic market at Nagpur. Thereafter, the respondent seized the products. Hence, the petitioner was summoned for enquiry before the respondent.

3. The learned counsel for the petitioner would submit that the petitioner is a business man, having UK Citizenship. He has been doing business for several years and has invested his funds in various companies. The petitioner is neither a director, nor a partner, nor an employee of M/s.Southern Impex, which has committed alleged fraud as per the respondent. As a business man, the petitioner invested his funds with the said M/s.Southern Impex in order to widen his area of business. The first accused is the proprietor of the said M/s.Southern Impex and the petitioner is no way related to him.

4. While being so, he was served with a show cause notice by the office of the Commissioner of Customs, for hearing. Accordingly, the

petitioner attended the enquiry. During enquiry, he was coerced to pay a sum of Rs.9,00,00,000/- for the alleged default, even though the petitioner has no role to play in the said Company. Later, the petitioner was arrested and remanded to judicial custody on 20.04.2022 by the respondent. He further submitted that there is absolutely no document to establish the relationship between the petitioner and other absconding accused.

5. He further submitted that he holds NRE Account with the State Bank of India, Mylapore Branch, Chennai. From the said account, a sum of Rs.3,00,02,000/- has been debited on 29.10.2020 and a Demand Draft dated 29.10.2020 was issued for a sum of Rs.3,00,00,000/- in favour of the Commissioner of Customs, Chennai. It was taken over by the respondent. The respondent deposited the said amount to the account of Commissioner of Customs, Customs House, Chennai, vide Challan No.000018 dated 12.11.2020. Therefore, the petitioner by a letter dated 11.01.2022 requested the Assistant Commissioner of Customs to refund a sum of Rs.3,00,00,000/- along with interest for the reason that the said M/s.Southern Impex is owned by the first accused which is having a 100% Export Oriented Unit, in which the petitioner is no way connected to the said Company. Therefore, the entire duty liability lies only against the said M/s.Southern Impex. In fact, the petitioner was not served any show cause notice in this regard even till today.

6. The learned counsel for the petitioner would further submit that the petitioner is ready and willing to deposit a sum of Rs.1,00,00,000/- (Rupees One Crore only) to the credit of File No: F.No.DRI/CRU/VIII/48/ENQ-1/INT-6/2020-CBE of 2022.

7. The learned Special Public Prosecutor filed a counter which reveals that though the first accused is a proprietor of the said M/s.Southern Impex, the petitioner had been instrumental in the starting of the said firm, importing the raw materials and diverting them into the domestic market for unlawful gains. He had assured to manage all the business related activities viz., procurement of goods from abroad, funding to run the unit, exports of M/s.Southern Impex, Pollachi. As instructed by the respondent, the first accused cleared the imported raw materials into the domestic market, procured inferior quality areca nut/betel nut waste powder from the domestic market to manage the shortage arising out of the clandestine removal of raw materials and exported the same by declaring over value as if it was manufactured out of the imported raw materials. Further the petitioner made voluntary statements and admitted about the removal of the imported duty free raw materials into the domestic market.

8. On perusal of the records, it reveals that so far the petitioner has paid a sum of Rs.9,00,00,000/- and also deducted a sum of Rs.3,00,02,000/- from his NRE Account with the State Bank of India, Mylapore Branch, Chennai in favour of the Commissioner of Customs, Chennai. The show cause notice revealed that why the seized goods i.e., 156.290 MTs of duty free imported unprocessed betel nut, valued at Rs.4,33,14,241/- under 100% Export Oriented Unit Scheme, diverted for clearance into the domestic market, should not be held liable for confiscation. However, it is seen that M/s.Southern Impex had already exported the goods and further the petitioner has also paid a sum of Rs.12,00,02,000/-. Further, the learned counsel for the petitioner would

submit that the petitioner is ready and willing to deposit some more reasonable amount as imposed by this Court.

9. Considering the aforesaid facts and circumstances of the case and also considering the period of incarceration by the petitioner from the date of his arrest i.e., 20.04.2022, this Court is inclined to grant bail to the petitioner.

10. Accordingly, the petitioner is directed to deposit a sum of Rs.1,00,00,000/- (Rupees One Crore only) to the credit of File No: F.No.DRI/CRU/VIII/48/ENQ-1/INT-6/2020-CBE on the file of the respondent and on such deposit the petitioner is ordered to be released on bail on his executing 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 Chief Judicial Magistrate, Coimbatore 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 of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall deposit a sum of Rs.1,00,00,000/- (Rupees One Crore only) to the credit of File No: F.No.DRI/CRU/VIII/48/ENQ-1/INT-6/2020-CBE on the file of the respondent, before the concerned Magistrate.

[c] the petitioner shall report before the respondent daily at 10.30 a.m. for a period of four weeks and thereafter, as and when required for interrogation.

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

[e] the petitioner 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 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].

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

08.06.2022

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To

1.The Chief Judicial Magistrate,
Coimbatore.

2. The Deputy Director,
Directorate of Revenue Intelligence,
Regional Unit,
1103, Trichy Road, Coimbatore – 641 018.

3. Central Prison,
Puzhal, Chennai.

4. The Public Prosecutor,
High Court of Madras.

G.K.ILANTHIRAIYAN, J.

Lpp

Pre-delivery order in

Crl.O.P.No. 12680 of 2022

08.06.2022

Crl.O.P.No.12680 of 2022

G.K.ILANTHIRAIYAN, J.

Today, the matter is listed under the caption "for being mentioned".

2. It is brought to the notice of this Court that some typographical error has been crept in the order dated 08.06.2022 in this present petition. Accordingly, the following correction shall be incorporated in the order:

(i) In paragraph No.8, instead of

"On perusal of the records, it reveals that so far the **petitioner** has paid a sum of Rs.9,00,00,000/- and also deducted a sum of Rs.3,00,02,000/- from his NRE Account with the State Bank of India, Mylapore Branch, Chennai in favour of the Commissioner of Customs, Chennai. The show cause notice revealed that why the seized goods i.e., 156.290 MTs of duty free imported unprocessed betel nut, valued at Rs.4,33,14,241/- under 100% Export Oriented Unit Scheme, diverted for clearance into the domestic market, should not be held liable for confiscation. However, it is seen that M/s.Southern Impex had already exported the goods and further the petitioner has also paid a sum of Rs.12,00,02,000/-. Further, the learned counsel for the petitioner would submit that the petitioner is ready and willing to deposit some more reasonable amount as imposed by this Court."

it should be corrected as,

"On perusal of the records, it reveals that so far the **first**

accused, M/s Southern Impex, Pollachi has paid a sum of Rs.9,00,00,000/- and also deducted a sum of Rs.3,00,02,000/- from his NRE Account with the State Bank of India, Mylapore Branch, Chennai in favour of the Commissioner of Customs, Chennai **from the petitioner.** The show cause notice revealed that why the seized goods i.e., 156.290 MTs of duty free imported unprocessed betel nut, valued at Rs.4,33,14,241/- under 100% Export Oriented Unit Scheme, diverted for clearance into the domestic market, should not be held liable for confiscation. However, it is seen that M/s.Southern Impex had already exported the goods and further the petitioner has also paid a sum of Rs.12,00,02,000/-. Further, the learned counsel for the petitioner would submit that the petitioner is ready and willing to deposit some more reasonable amount as imposed by this Court."

3. Further, the learned counsel for the petitioner requested that the sum of Rs.1,00,00,000/- to be deposited may be reduced. Considering the submission made by the learned counsel for the petitioner, this Court is inclined to reduce the deposit amount from Rs.1,00,00,000/- to **Rs.50,00,000/-**. Accordingly, the following correction shall be incorporated in the order:

In paragraph No.10 and in 10(b), the order is corrected as follows:

*" 10. Accordingly, the petitioner is directed to deposit a sum of **Rs.50,00,000/- (Rupees Fifty Lakhs only)** to the credit of File No: F.No.DRI/CRU/VIII/48/ENQ-1/INT-6/2020-CBE on the file of the respondent and on such deposit the petitioner is ordered to be released on bail on his executing 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 Chief Judicial Magistrate, Coimbatore and on further conditions that:-"

"10[b] the petitioner shall deposit a sum of ***Rs.50,00,000/- (Rupees Fifty Lakhs only)*** *to the credit of File No: F.No.DRI/CRU/VIII/48/ENQ-1/INT-6/2020-CBE on the file of the respondent, before the concerned Magistrate".*

4. Registry is directed to carry out the necessary corrections in the Order dated 08.06.2022 in Crl.O.P.No.12680 of 2022 and issue fresh order copy.

10.06.2022

mn

G.K.ILANTHIRAIYAN, J.

mn

Crl.O.P.No.12680 of 2022

10.06.2022